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MASSACHUSETTS BAR ASSOCIATION.

NOTICE OF ANNUAL MEETING.

The twenty-seventh annual meeting of the Massachusetts Bar Association for the election of officers, consideration of the reports of committees and such other business as may come before the meeting, will be held on Thursday, February 25th, 1937, at 2:00 P. M., in the rooms of the Boston Bar Association in the Parker House, Boston. This date and hour were selected to give members an opportunity to attend the annual Bench and Bar dinner of the Boston Bar Association, which will be held that evening, as hereinafter explained, and with the understanding that if the business is not completed before the dinner, the meeting can reconvene on Friday morning and continue its discussion.

The report of the Nominating Committee will be found on page 2.

After the regular business there will be opportunity for discussion of the pending resolve relative to organization of the bar and the twelfth annual report of the Judicial Council both of which appear in this number of the QUARTERLY.

FRANK W. GRINNELL, *Secretary*,
60 State Street, Boston.

THE BENCH AND BAR DINNER.

The annual Bench and Bar dinner of the Boston Bar Association in honor of Judge Manley O. Hudson, of the Permanent Court of International Justice, will take place on Thursday, February 25th, 1937, at the Hotel Statler in Boston, at 7:30 P. M. Reception at 7:00 P. M.

Members of the Massachusetts Bar Association and their wives are invited to attend the dinner. The price of the tickets will be $3.50 and they may be obtained from John C. Jones, Jr., Chairman of the Committee, 53 State Street, Boston, upon application accompanied by a check. Prompt application will be very helpful.

REPORT OF NOMINATING COMMITTEE.

To the Members of the Massachusetts Bar Association:

Your committee submits the following nominations:

For *President:*
HENRY R. MAYO,
of Lynn.

For *Vice-President:*
FREDERICK LAWTON,
of Boston.

For *Treasurer:*
HORACE E. ALLEN,
of Springfield.

For *Secretary:*
FRANK W. GRINNELL,
of Boston.

For *Members At Large of the Executive Committee:*

MORRIS R. BROWNELL, of New Bedford,
JAMES A. CROTTY, of Worcester,
SYBIL H. HOLMES, of Brookline,
P. JOSEPH MCMANUS, of Arlington,
LISPENARD B. PHISTER, of Boston,
PHILIP RUBENSTEIN, of Brookline,
ROMNEY SPRING, of Boston,
RICHARD B. WALSH, of Lowell.

Under the by-laws other nominations may be sent to the Secretary in writing before the meeting.

NATHAN P. AVERY, *Chairman.*

Note.

The President, the last ex-President, the Treasurer and the Secretary are members of the Executive Committee *ex officio.*

Under the by-laws the presidents of the following thirteen *affiliated* associations, or delegates of such associations designated by them, are members *ex officio* of the Executive Committee of the Massachusetts Bar Association:

Barnstable County Bar Association,
Berkshire County Bar Association,
Bar Association of the City of Boston,
Bristol County Bar Association,
Brockton Bar Association,
Essex Bar Association,
Franklin County Bar Association,
Hampden County Bar Association,
Hampshire County Bar Association,
Law Society of Massachusetts,
Bar Association of the County of Middlesex,
Norfolk County Bar Association,
Worcester County Bar Association.

"WINGS OVER WASHINGTON"
A Preview Reproduced by Permission of the New York Tribune, Inc.

GOVERNOR HURLEY'S LETTER TO THE PRESIDENT ON THE "CHILD CONTROL" AMENDMENT.*

(Reprinted from the Boston Globe of February 5, 1937.)

"*My Dear Mr. President*—Recently you sent an appeal to the Governors of several states, including Massachusetts, for ratification by the Legislatures of the proposed Child Labor Amendment. After careful study, I am constrained to the belief that the measure calling for ratification should be defeated.

"It is true that support of this measure comes in most instances from a sincere desire to purge the country of the shame of child labor exploitation. (Massachusetts, because of wise and provident laws, is free from this condition.) It is also true that much of the opposition springs from selfish and unworthy motives.

* The amendment provides that "Congress shall have the power to limit, regulate and prohibit the labor of all persons under 18 years of age." For a discussion of the question whether the proposed amendment is still legally before the states for action since its defeat in 26 states in 1924, see *American Bar Association Journal* for July, 1934, p. 448 and MASSACHUSETTS LAW QUARTERLY for August, 1934, p. 22.

"In a referendum in 1924 our people registered their protest against the enactment of the amendment by the overwhelming plurality of 456,-102 votes, nearly four to one. If I interpret their sentiment correctly, they are in complete sympathy with those who seek the elimination of child labor abuses, but they recognize dangerous possibilities and implications in this particular amendment, which provides that 'Congress shall have power to limit, regulate, and prohibit the labor of all persons under eighteen years of age.'

"These words contain a staggering grant of power. They would confer on Congress the right to legislate, not only for children but for adolescents as well, in almost every department of human activity. Nearly one-third of our population, themselves without suffrage, would be in constant jeopardy of a direct and despotic control by the Federal Government. Whatever work they do in the home and on the farm, within as well as outside the family, with or without compensation, would be under the absolute jurisdiction of any bureaucracy set up to administer the amendment.

"Education might conceivably fall within the scope of their authority, since 'labor' means any mental or physical exertion. The instruction of our youth could thus be taken from the family and the state, where it is now properly lodged, and entrusted to an impersonal body in Washington, blind, perchance, to the inalienable rights of parents and to the Constitutional rights of local governments.

"It is not too fantastic to visualize, as a result of such autocracy, compulsory military training, involuntary work on public projects, forced attendance in concentration camps, restriction of religious education and similar actualities inimical to the welfare of our youth and repugnant to the traditions of America.

"Under the language of the amendment, Federal jurisdiction might easily operate in many other fields, such as that of juvenile delinquency or of psycho-analytic experimentation. However applied, it would undoubtedly necessitate the appointment of a horde of snooping, meddlesome and tax-consuming investigators and officials reminiscent of the odious activities of those employed to enforce the Federal prohibition laws.

"No imaginable contingency would seem to justify legislation which makes possible the conditions pictured above.

"The claim is made that Congress would never take advantage of the sweeping authority thus vested in it. Then the natural query arises: Why delegate a dangerous and objectionable power in the hope that it will never be used?

"Moreover, we cannot guarantee the policies of future Congresses any more than we can predict the legal interpretations of future Supreme Courts. Experience has shown that Legislative and judicial bodies sometime tend to exercise all the prerogatives they possess.

"It is argued that the amendment, once discredited, can be repealed forthwith. We have found very recently that rights surrendered by the states to the Federal Government are not easily regained. An amendment which will have taken at least 13 years to place in the Constitution of the United States might well take as many more to strike therefrom.

"Moreover, there is reasonable doubt as to the necessity for Congressional action in this direction. Forty-seven states now forbid factory employment of children under 14. Forty-four states prohibit night work of children under 16. Thirty-six states restrict employment of minors to eight hours a day. The tendency throughout the nation seems decidedly toward a betterment of existing conditions.

"The question has also been raised as to the Constitutionality of adopting the amendment after a lapse of 13 years and in view of the conflicting votes of succeeding Legislatures in certain states.

"For these reasons, Mr. President I am impelled reluctantly, but none the less emphatically, to oppose ratification of the Child Labor amendment. The powers which it would confer on Congress are far too great and extensive without those necessary restrictions which would prevent abuse.

"With best personal regards, I have the honor to remain, yours faithfully,

"CHARLES F. HURLEY, *Governor.*"

SENATE 218 RELATIVE TO THE ORGANIZATION OF THE BAR.

In November, 1936, a subcommittee of the Executive Committee of the Massachusetts Bar Association was appointed to prepare a tentative draft of an act relative to the organization of the bar, similar to the Michigan act, and call it to the attention of the bar for discussion. Accordingly, a circular, dated November 19th, was sent to all members of the association and to others, and this circular was also printed in the MASSACHUSETTS LAW QUARTERLY for October, 1936 (pp. 5–9). As a result of further discussion and suggestions received by correspondence and otherwise, the draft in that circular was entirely revised and the following petition and draft resolve, based on the opinions of the justices (279 Mass. 607 and 289 Mass. 607), were filed by the members of the subcommittee, and by Mr. Mayo, as individuals. S. 218 is now pending before the Judiciary Committee of the legislature with two other bills introduced by Wycliffe C. Marshall, Esq., relating to the subject and numbered H. 139 and H. 219. The hearing is set for February 17th, 1937, at 10 A. M.

COPY OF PETITION AS FILED.

The undersigned citizens of Massachusetts respectfully represent that the public interest, in the administration of justice and in the interpretation of the laws and in the bar of the Commonwealth as an instrument to advance the ends of justice, calls for a better organization of the bar of the Commonwealth, and respectfully petition for the passage of the accompanying resolve or other appropriate legislative action.

W. ARTHUR GARRITY, Worcester; JAMES A. HALLORAN, Norwood; HARRIS M. RICHMOND, Winchester; ROMNEY SPRING, Boston; P. JOSEPH MCMANUS, Arlington; HENRY R. MAYO, Lynn; FRANK W. GRINNELL, Boston.

SENATE 218 — A RESOLVE RELATIVE TO THE ORGANIZATION OF THE BAR OF MASSACHUSETTS.

Resolved: In order to promote the public interest in the administration of justice, in the interpretation of the laws, and in the bar of the commonwealth as a body of officers of the court, the Supreme Judicial Court is hereby requested to provide, by rules, for the organization of all present and future members of the bar of this commonwealth, as a self-governing body subject to the constitutional authority and rules of said court, to be known as the Bar of Massachusetts, and by such rules to provide for membership dues not to exceed five dollars per annum to meet the expenses thereof, the payment of which shall be a requirement incident to the exercise of the privilege to practise law and the non-payment of which shall be ground for suspension from practice. The rules relative to such organization shall be printed in the Massachusetts Reports and in the advance sheets thereof.

Editorial from the Boston Herald of February 1, 1937.

"A group of lawyers, acting as citizens, have petitioned the Legislature for the passage of a resolve for 'the better organization of the bar of the commonwealth.' What is sought is that the Supreme Judicial Court shall 'provide, by rules, for the organization of all present and future members of the bar . . . as a self-governing body, subject to the constitutional authority and rules' of that court, 'to be known as the Bar of Massachusetts,' and that membership dues of $5 a year shall be required, with non-payment as 'ground for suspension from practice.'

"This resolve would go to the court, however, in the form of a suggestion, not a mandate, as something that ought to be done and not as a thing that must be done. This general idea was strongly endorsed by the American Bar Association at its recent Boston meeting. It represents a movement under way in many states. But whereas this plan, which is essentially the Michigan plan, so-called, was adopted in that state by command of the Legislature, the question arises as to whether it could thus be adopted here. Has the Legislature the right to order the court to do it? On the other hand, has the court the right to go forward with such plan, involving as it does a money payment, without legislative action?

"The petition contemplates a polite request to be made by our General Court to the Supreme Judicial Court. If the new organization came into existence it would add one requirement to the present conditions for the practice of law here. An attorney would have to belong to the state bar association and be subject to its rules. The possible advantages are obvious. How the bar feels about the proposal is not known. This petition probably will induce that general and complete discussion which the idea ought to have."

Note.

As pointed out in the editorial quoted, the entire bar of the commonwealth would be an organized professional body, to which a lawyer would be admitted with the privilege of taking part in the professional activities of "the bar", in choosing its representatives, etc., and with his share, to the extent of five dollars, in the responsibilities which the public and the courts expect "the bar" to meet.

Today, the work and the expense of trying to meet these professional responsibilities are shared by a minority of the bar who are willing to pay their dues and do some professional service in voluntary bar associations. Relatively few lawyers appear to realize how much of this work is done for them, or why it is done, or what it costs, or the value to them, of the existence of the work of such organizations, whether they contribute to them or not. The common remark that one hears is, "What does the bar association do?" or "What do I get out of it?" or "What would I get out of it if I were a member?" There are probably only two ways by which

many members of the bar would learn to realize this value. One would be the abolition of all the committees of voluntary bar associations except the entertainment committees and the resulting cessation of all professional activity; the other way would seem to be to try the experiment of a more complete organization of the profession brought about as the result of co-operative work between the courts and the bar. It may be assumed that in Massachusetts, as in other states, the court would seek the assistance of the bar in formulating the rules of organization just as the Supreme Court of the United States has sought the assistance of the bar through the rules committees of all the Federal circuits in the country, in connection with the preparation of the Federal rules.

Some men appear to think that the proposed organization plan means "regimentation" by compulsion. It means nothing of the kind. Every member of the bar today is subject to the constitutional authority and rules of the court, whether he likes the idea or not. It is a constitutional condition of professional life which he accepted and entered into voluntarily when he applied for admission to the bar. This condition would not be changed by the proposed organization. The only element of compulsion in the proposed organization, which does not exist today, would be the obligation to share the burdens of the profession to the extent of five dollars a year, if a man desired to exercise his privilege of active practice; if he did not wish to exercise that privilege, he could remain an inactive member of the bar, — a condition which is expressly provided for by rules in other states. The annual dues of five dollars, as a condition of practising, would be a requirement like the payment that is required from applicants for admission to the bar as a contribution toward the professional work of examining them.

There is nothing new about the requirement of an annual practice fee for lawyers, even in Massachusetts, as is shown by a license issued by the Federal Internal Revenue Collector, found recently among some old papers, showing the payment of $6.67 for a lawyer's license for the period from September 1, 1863, to May 1, 1864.* We are all familiar with the reasonable requirements in the form of a license fee for the exercise of various privileges such as driving a car. Those fees are excise taxes. The proposed dues of the bar would not be a tax, but a professional obligation established by the court in the public interest, to contribute a small sum toward the expenses of the profession — a reasonable requirement of a

* No. 14313

Granted Sept. 1, 1863.
Expires May 1st, 1864.

UNITED STATES INTERNAL REVENUE.

LICENSE.

TO ALL WHOM IT MAY CONCERN:

This License is granted to W. R. P. Washburn, of the City of Boston, in the county of Suffolk and State of Mass., to carry on the business or occupation of Lawyer at No. 46 Washington Street, in the aforementioned city, county, and state, having paid the tax of Six 67/100 dollars therefor, conformably to the provisions of an act entitled "An act to provide internal revenue to support the government and to pay interest on the public debt," approved July 1, 1862, and the amendments thereto.

This License to be in force until the first day of May, 1864, provided the said W. R. P. Washburn shall conform to the requirements of said act, and of such other act or acts as are now or may hereafter be in this behalf enacted.

Given under my hand and seal at Boston, this 1st day of Sept., A. D. 1863.

EDWARD L. PIERCE,
Collector of the 3d Collection District, in the State of Mass.

man who enters it. There would be no disgrace in not paying it; a man simply would suspend his privilege of practice until it was paid.

Presumably any such plan would provide for representation on the governing body, whatever it might be called, of locally chosen representatives from different counties or other districts of the state, as it is, of course, essential that the bar from different parts of the state should be represented in order that problems of the judicial system and of the bar in Berkshire or Bristol or Essex or Worcester should be more generally understood, as well as those of the metropolitan district. One of the weaknesses resulting from the present lack of organization of the bar lies in the fact that relatively few lawyers know much about the judicial system, or its problems, outside of their own immediate vicinity.

These are some of the matters for the bar to think of in considering whether it is not possible and desirable to bring about a better organization of the profession as the result of co-operative work of the bench and bar than exists today. It is a matter which the public, as well as members of the profession, may well consider also because it is the public which is ultimately, if not primarily, interested.

It should always be remembered that the suggested organization does not, and should not, involve the disappearance of the voluntary organizations as co-operative agencies of the profession. It is important that the Berkshire Bar Association, the Worcester Bar Association, the Boston Bar Association and other voluntary associations, except the Massachusetts Bar Association, should continue their professional existence if the proposed plan is adopted. There is no danger of too much professional interest on the part of the bar when the nature of the public and professional problems is considered.

The discussions in this number, relative to the organization of the bar in different states, followed by the address of Arthur T. Vanderbilt, Esq., of New Jersey, recently nominated at Columbus, Ohio, for the presidency of the American Bar Association next year, are reprinted here in order to give members of the Massachusetts bar fuller information as to the organization movement in other parts of the country. They are not to be regarded as arguments in favor of any particular plan of organization for Massachusetts. They simply provide material to be studied in formulating rules for organization if the proposed plan should be approved. Just as the resolve, submitted to the legislature, differs, in its form, from the legislative action on the subject in any other state, so the rules to be adopted, if the resolve is approved, may differ in their details from those of other states, after adequate study to prepare a workable plan adapted to Massachusetts.

F. W. G.

THE PRESIDENT'S MESSAGE OF FEBRUARY 5th, 1937, IN REGARD TO THE FEDERAL JUDICIARY.

(Reprinted from the Boston Transcript.)

In view of its far-reaching importance and sudden appearance, the full text of the President's message is reprinted for convenient reference and study by the bar of Massachusetts. The proposal to dilute the Supreme Court to such an extent as to practically destroy its character as an independent judicial body calls for the prompt and serious consideration and protest of members of the bar if they believe, as I do, that the proposal threatens the liberties of the American people by so disrupting our constitutional frame of government as to throw absolute power, unchecked by constitutional restraint, into the hands of Congress and of the executive in regard to every detail of the life of individual Americans, and of the functions of the states as representatives of local self-government.

F. W. GRINNELL.

TEXT OF COURT MESSAGE.

WASHINGTON, Feb. 5 (AP)—The text of President Roosevelt's message to Congress on reorganization of the Federal Judiciary follows:

I have recently called the attention of the Congress to the clear need for a comprehensive program to reorganize the administrative machinery of the executive branch of our Government. I now make a similar recommendation to the Congress in regard to the judicial branch of the Government, in order that it also may function in accord with modern necessities.

The Constitution provides that the President "shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." No one else is given a similar mandate. It is therefore the duty of the President to advise the Congress in regard to the judiciary whenever he deems such information or recommendation necessary.

I address you for the further reason that the Constitution vests in the Congress direct responsibility in the creation of courts and judicial offices and in the formulation of rules of practice and procedure. It is, therefore, one of the definite duties of the Congress constantly to maintain the effective functioning of the Federal judiciary.

The judiciary has often found itself handicapped by insufficient personnel with which to meet a growing and more complex business. It is true that the physical facilities of conducting the business of the courts have been greatly improved, in recent years, through the erection of suitable quarters, the provision of ade-

quate libraries and the addition of subordinate court officers. But in many ways these are merely the trappings of judicial office. They play a minor part in the processes of justice.

Since the earliest days of the republic, the problem of the personnel of the courts has needed the attention of the Congress. For example, from the beginning, over repeated protests to President Washington, the justices of the Supreme Court were required to "ride circuit" and, as circuit justices, to hold trials throughout the length and breadth of the land—a practice which endured over a century.

In almost every decade since 1789, changes have been made by the Congress whereby the number of judges and the duties of judges in Federal courts have been altered in one way or another. The Supreme Court was established with six members in 1789; it was reduced to five in 1801; it was increased to seven in 1807; it was increased to nine in 1837; it was increased to ten in 1863; it was reduced to seven in 1866; it was increased to nine in 1869.

The simple fact is that today a new need for legislative action arises because the personnel of the Federal judiciary is insufficient to meet the business before them. A growing body of our citizens complain of the complexities, the delays, and the expense of litigation in United States courts.

A letter from the Attorney General, which I submit herewith, justifies by reasoning and statistics the common impression created by our overcrowded Federal dockets—and it proves the need for additional judges.

Delay in any court results in injustice.

It makes lawsuits a luxury available only to the few who can afford them or who have property interests to protect which are sufficiently large to repay the cost. Poorer litigants are compelled to abandon valuable rights or to accept inadequate or unjust settlements because of sheer inability to finance or to await the end of a long litigation. Only by speeding up the processes of the law and thereby reducing their cost, can we eradicate the growing impression that the courts are chiefly a haven for the well-to-do.

Delays in the determination of appeals have the same effect. Moreover, if trials of original actions are expedited and existing accumulations of cases are reduced, the volume of work imposed on the circuit courts of appeals will further increase.

The attainment of speedier justice in the courts below will enlarge the task of the Supreme Court itself. And still more work would be added by the recommendation which I make later in this message for the quicker determination of constitutional questions by the highest court.

Even at the present time the Supreme Court is laboring under a heavy burden. Its difficulties in this respect were superficially lightened some years ago by authorizing the court, in its discretion, to refuse to hear appeals in many classes of cases. This

discretion was so freely exercised that in the last fiscal year, although 867 petitions for review were presented to the Supreme Court, it declined to hear 717 cases. If petitions in behalf of the Government are excluded, it appears that the court permitted private litigants to prosecute appeals in only 108 cases out of 803 applications.

Many of the refusals were doubtless warranted. But can it be said that full justice is achieved when a court is forced by the sheer necessity of keeping up with its business to decline, without even an explanation, to hear 87 per cent of the cases presented to it by private litigants?

It seems clear, therefore, that the necessity of relieving present congestion extends to the enlargement of the capacity of all the Federal courts.

A part of the problem of obtaining a sufficient number of judges to dispose of cases is the capacity of the judges themselves.

This brings forward the question of aged or infirm judges—a subject of delicacy and yet one which requires frank discussion.

In the Federal courts there are in all 237 life tenure permanent judgeships. Twenty-five of them are now held by judges over seventy years of age and eligible to leave the bench on full pay. Originally no pension or retirement allowance was provided by the Congress.

When after eighty years of our national history the Congress made provision for pensions, it found a well-entrenched tradition among judges to cling to their posts, in many instances far beyond their years of physical or mental capacity. Their salaries were small. As with other men, responsibilities and obligations accumulated. No alternative had been open to them except to attempt to perform the duties of their offices to the very edge of the grave.

In exceptional cases, of course, judges, like other men, retain to an advanced age full mental and physical vigor. Those not so fortunate are often unable to perceive their own infirmities. "They seem to be tenacious of the appearance of adequacy." The voluntary retirement law of 1869 provided, therefore, only a partial solution. That law, still in force, has not proved effective in inducing aged judges to retire on a pension.

This result has been foreseen in the debates when the measure was being considered. It was then proposed that when a judge refused to retire upon reaching the age of seventy, an additional judge should be appointed to assist in the work of the court. The proposal passed the House but was eliminated in the Senate.

With the opening of the twentieth century and the great increase of population and commerce, and the growth of a more complex type of litigation, similar proposals were introduced in the Congress. To meet the situation, in 1913, 1914, 1915 and 1916, the Attorneys General then in office recommended to the

Congress that when a district or a circuit judge failed to retire at the age of seventy, an additional judge be appointed in order that the affairs of the court might be promptly and adequately discharged.

In 1919 a law was finally passed providing that the President "may" appoint additional district and circuit judges, but only upon a finding that the incumbent judge over seventy "is unable to discharge efficiently all the duties of his office by reason of mental or physical disability of permanent character." The discretionary and indefinite nature of this legislation has rendered it ineffective. No President should be asked to determine the ability or disability of any particular judge.

The duty of a judge involves more than presiding or listening to testimony or arguments. It is well to remember that the mass of details involved in the average of law cases today is vastly greater and more complicated than even twenty years ago. Records and briefs must be read; statutes, decisions and extensive material of a technical, scientific, statistical and economic nature must be searched and studied; opinions must be formulated and written. The modern tasks of judges call for the use of full energies.

Modern complexities call also for a constant infusion of new blood in the courts, just as it is needed in executive functions of the Government and in private business. A lowered mental or physical vigor leads men to avoid an examination of complicated and changed conditions. Little by little, new facts become blurred through old glasses fitted, as it were, for the needs of another generation; older men, assuming that the scene is the same as it was in the past, cease to explore or inquire into the present or the future.

We have recognized this truth in the Civil Service of the nation and of many States by compelling retirement on pay at the age of seventy. We have recognized it in the Army and Navy by retiring officers at the age of sixty-four. A number of States have recognized it by providing in their constitutions for compulsory retirement of aged judges.

Life tenure of judges, assured by the Constitution, was designed to place the courts beyond temptations or influences which might impair their judgments. It was not intended to create a static judiciary. A constant and systematic addition of younger blood will vitalize the courts and better equip them to recognize and apply the essential concepts of justice in the light of the needs and the facts of an ever-changing world.

It is obvious, therefore, from both reason and experience, that some provision must be adopted which will operate automatically to supplement the work of older judges and accelerate the work of the court.

I, therefore, earnestly recommend that the necessity of an increase in the number of judges be supplied by legislation pro-

viding for the appointment of additional judges in all Federal courts, without exception, where there are incumbent judges of retirement age who do not choose to retire or to resign. If an elder judge is not in fact incapacitated, only good can come from the presence of an additional judge in the crowded state of the dockets; if the capacity of an elder judge is in fact impaired, the appointment of an additional judge is indispensable. This seems to be a truth which can not be contradicted.

I also recommend that the Congress provide machinery for taking care of sudden or long-standing congestion in the lower courts. The Supreme Court should be given power to appoint an administrative assistant who may be called a proctor. He would be charged with the duty of watching the calendars and the business of all the courts in the Federal system.

The Chief Justice thereupon should be authorized to make a temporary assignment of any circuit or district judge hereafter appointed in order that he may serve as long as needed in any circuit or district where the courts are in arrears.

I attach a carefully considered draft of a proposed bill, which, if enacted, would, I am confident, afford substantial relief. The proposed measure also contains a limit on the total number of judges who might thus be appointed and also a limit on the potential size of any one of our Federal courts.

These proposals do not raise any issue of Constitutional law. They do not suggest any form of compulsory retirement for incumbent judges. Indeed, those who have reached the retirement age, but desire to continue their judicial work, would be able to do so under less physical and mental strain and would be able to play a useful part in relieving the growing congestion in the business of our courts.

Among them are men of eminence and great ability whose services the Government would be loath to lose. If, on the other hand, any judge eligible for retirement should feel that his court would suffer because of an increase in its membership, he may retire or resign under already existing provisions of law if he wishes to do so. In this connection let me say that the pending proposal to extend to the justices of the Supreme Court the same retirement privileges now available to other Federal judges, has my entire approval.

One further matter requires immediate attention. We have witnessed the spectacle of conflicting decisions in both trial and appellate courts on the constitutionality of every form of important legislation. Such a welter of uncomposed differences of judicial opinion has brought the law, the courts, and, indeed, the entire administration of justice dangerously near to disrepute.

A Federal statute is held legal by one judge in one district; it is simultaneously held illegal by another judge in another district. An act valid in one judicial circuit is invalid in another judicial circuit. Thus rights fully accorded to one group of citizens may be

denied to others. As a practical matter this means that for periods running as long as one or two years or three years—until final determination can be made by the Supreme Court—the law loses its most indispensable element—equality.

Moreover, during the long processes of preliminary motions, original trials, petitions for rehearings, appeals, reversals on technical grounds requiring re-trials, motions before the Supreme Court and the final hearing by the highest tribunal—during all this time labor, industry, agriculture, commerce and the Government itself go through an unconscionable period of uncertainty and embarrassment. And it is well to remember that during these long processes the normal operations of society and Government are handicapped in many cases by differing and divided opinions in the lower courts and by the lack of any clear guide for the dispatch of business. Thereby our legal system is fast losing another essential of justice—certainty.

Finally, we find the processes of government itself brought to a complete stop from time to time by injunctions issued almost automatically, sometimes even without notice to the Government, and not infrequently in clear violation of the principle of equity that injunctions should be granted only in those rare cases of manifest illegality and irreparable damage against which the ordinary course of the law offers no protection. Statutes which the Congress enacts are set aside or suspended for long periods of time, even in cases to which the Government is not a party.

In the uncertain state of the law, it is not difficult for the ingenious to devise novel reasons for attacking the validity of new legislation or its application. While these questions are laboriously brought to issue and debated through a series of courts, the Government must stand aside. It matters not that the Congress has enacted the law, that the Executive has signed it and that the administrative machinery is waiting to function.

Government by injunction lays a heavy hand upon normal processes; and no important statute can take effect—against any individual or organization with the means to employ lawyers and engage in wide-flung litigation—until it has passed through the whole hierarchy of the courts. Thus the judiciary, by postponing the effective date of acts of the Congress, is assuming an additional function and is coming more and more to constitute a scattered, loosely organized and slowly operating third house of the national Legislature.

This state of affairs has come upon the nation gradually over a period of decades. In my annual message to this Congress I expressed some views and some hopes.

Now, as an immediate step, I recommend that the Congress provide that no decision, injunction, judgment or decree on any constitutional question be promulgated by any Federal court without previous and ample notice to the Attorney General and an opportunity for the United States to present evidence and be

heard. This is to prevent court action on the constitutionality of acts of the Congress in suits between private individuals, where the Government is not a party to the suit, without giving opportunity to the Government of the United States to defend the law of the land.

I also earnestly recommend that in cases in which any court of first instance determines a question of constitutionality, the Congress provide that there shall be a direct and immediate appeal to the Supreme Court, and that such cases take precedence over all other matters pending in that court. Such legislation will, I am convinced, go far to alleviate the inequality, uncertainty and delay in the disposition of vital questions of constitutionality arising under our old fundamental law.

My desire is to strengthen the administration of justice and to make it a more effective servant of public need. In the American ideal of government the courts find an essential and constitutional place. In striving to fulfill that ideal, not only the judges but the Congress and the executive as well, must do all in their power to bring the judicial organization and personnel to the high standards of usefulness which sound and efficient government and modern conditions require.

This message has dealt with four present needs:

First, to eliminate congestion of calendars and to make the judiciary as a whole less static by the constant and systematic addition of new blood to its personnel;

Second, to make the judiciary more elastic by providing for temporary transfers of circuit and district judges to those places where Federal courts are most in arrears;

Third, to furnish the Supreme Court practical assistance in supervising the conduct of business in the lower courts;

Fourth, to eliminate inequality, uncertainty and delay now existing in the determination of constitutional questions involving Federal statutes.

If we increase the personnel of the Federal courts so that cases may be promptly decided in the first instance, and may be given adequate and prompt hearing on all appeals; if we invigorate all the courts by the persistent infusion of new blood; if we grant to the Supreme Court further power and responsibility in maintaining the efficiency of the entire Federal judiciary and if we assure Government participation in the speedier consideration and final determination of all constitutional questions, we shall go a long way toward our high objectives.

If these measures achieve their aim, we may be relieved of the necessity of considering any fundamental changes in the powers of the courts or the Constitution of our Government—changes which involve consequences so far-reaching as to cause uncertainty as to the wisdom of such course.

DRAFT OF BILL TO PROVIDE ADDITIONAL FEDERAL JUDGES.

(As printed in the Supplement to the "United States Law Week" for February 9, 1937.)

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That

(a) When any judge of a court of the United States, appointed to hold his office during good behavior, has heretofore or hereafter attained the age of seventy years and has held a commission or commissions as judge of any such court or courts at least ten years, continuously or otherwise, and within six months thereafter has neither resigned nor retired, the President, for each such judge who has not so resigned or retired, shall nominate, and by and with the advice and consent of the Senate, shall appoint one additional judge to the court to which the former is commissioned. *Provided*, That no additional judge shall be appointed hereunder if the judge who is of retirement age dies, resigns or retires prior to the nomination of such additional judge.

(b) The number of judges of any court shall be permanently increased by the number appointed thereto under the provisions of subsection (a) of this section. No more than fifty judges shall be appointed thereunder, nor shall any judge be so appointed if such appointment would result in

(1) more than fifteen members of the Supreme Court of the United States,

(2) more than two additional members so appointed to a circuit court of appeals, the Court of Claims, the United States Court of Customs and Patent Appeals, or the Customs Court, or

(3) more than twice the number of judges now authorized to be appointed for any district, or in the case of judges appointed for more than one district, for any such group of districts.

(c) That number of judges which is at least two-thirds of the number of which the Supreme Court of the United States consists, or three-fifths of the number of which the United States Court of Appeals for the District of Columbia, the Court of Claims or the United States Court of Customs and Patent Appeals consists, shall constitute a quorum of such court.

(d) An additional judge shall not be appointed under the provisions of this section when the judge who is of retirement age is commissioned to an office as to which Congress has provided that a vacancy shall not be filled.

SEC. 2. (a) Any circuit judge hereafter appointed may be designated and assigned from time to time by the Chief Justice of the United States for service in the circuit court of appeals for any

circuit. Any district judge hereafter appointed may be designated and assigned from time to time by the Chief Justice of the United States for service in any district court, or, subject to the authority of the Chief Justice, by the senior circuit judge of his circuit for service in any district court within the circuit.

A district judge designated and assigned to another district hereunder may hold court separately and at the same time as the district judge in such district. All designations and assignments made hereunder shall be filed in the office of the clerk and entered on the minutes of both the court from and to which a judge is designated and assigned, and thereafter the judge so designated and assigned shall be authorized to discharge all the judicial duties (except the power of appointment to a statutory position or of permanent designation of a newspaper or depository of funds) of a judge of the court to which he is designated and assigned.

The designation and assignment of a judge shall not impair his authority to perform such judicial duties of the court to which he was commissioned as may be necessary or appropriate. The designation and assignment of any judge may be terminated at any time by order of the Chief Justice or the senior circuit judge, as the case may be.

(b) After the designation and assignment of a judge by the Chief Justice, the senior circuit judge of the circuit in which such judge is commissioned may certify to the Chief Justice any consideration which such senior circuit judge believes to make advisable that the designated judge remain in or return for service in the court to which he was commissioned. If the Chief Justice deems the reasons sufficient he shall revoke, or designate the time of termination of, such designation and assignment.

(c) In case a trial or hearing has been entered upon but has not been concluded before the expiration of the period of service of a district judge designated and assigned hereunder, the period of service shall, unless terminated under the provisions of subsection (a) of this section, be deemed to be extended until the trial or hearing has been concluded.

Any designated and assigned district judge who has held court in another district than his own shall have power, notwithstanding his absence from such district and the expiration of any time limit in his designation, to decide all matters which have been submitted to him within such district, to decide motions for new trials, settle bills of exceptions, certify or authenticate narratives of testimony or perform any other act required by law or the rules to be performed in order to prepare any case so tried by him for review in an appellate court; and his action thereon in writing filed with the clerk of the court where the trial or hearing was had shall be as valid as if such action had been taken by him within that district and within the period of his designation.

Any designated and assigned circuit judge who has sat on another court than his own shall have power, notwithstanding the

expiration of any time limit in his designation, to participate in the decision of all matters submitted to the court while he was sitting and to perform or participate in any act appropriate to the disposition or review of matters submitted while he was sitting on such court, and his action thereon shall be as valid as if it had been taken while sitting on such court and within the period of his designation.

SEC. 3. (a) The Supreme Court shall have power to appoint a Proctor. It shall be his duty:

(1) to obtain and, if deemed by the Court to be desirable, to publish information as to the volume, character, and status of litigation in the district courts and circuit courts of appeals, and such other information as the Supreme Court may from time to time require by order, and it shall be the duty of any judge, clerk or marshal of any court of the United States promptly to furnish such information as may be required by the Proctor;

(2) to investigate the need of assigning district and circuit judges to other courts and to make recommendations thereon to the Chief Justice;

(3) to recommend, with the approval of the Chief Justice, to any court of the United States methods for expediting cases pending on its dockets; and

(4) to perform such other duties consistent with his office as the Court shall direct.

(b) The Proctor shall, by requisition upon the Public Printer, have any necessary printing and binding done at the Government Printing Office and authority is conferred upon the Public Printer to do such printing and binding.

(c) The salary of the Proctor shall be $10,000 per annum, payable out of the Treasury in monthly installments, which shall be in full compensation for the services required by law. He shall also be allowed, in the discretion of the Chief Justice, stationery, supplies, travel expenses, equipment, necessary professional and clerical assistance and miscellaneous expenses appropriate for performing the duties imposed by this section. The expenses in connection with the maintenance of his office shall be paid from the appropriation of the Supreme Court of the United States.

SEC. 4. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000 for the salaries of additional judges and the other purposes of this Act during the fiscal year 1937.

SEC. 5. When used in this Act—

(a) The term "judge of retirement age" means a judge of a court of the United States, appointed to hold his office during good behavior, who has attained the age of seventy years and has held a commission or commissions as judge of any such court or courts at

least ten years, continuously or otherwise, and within six months thereafter, whether or not he is eligible for retirement, has neither resigned nor retired.

(b) The term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia; the term "senior circuit judge" includes the Chief Justice of the United States Court of Appeals for the District of Columbia; and the term "circuit" includes the District of Columbia.

(c) The term "district court" includes the District Court of the District of Columbia but does not include the district court in any territory or insular possession.

(d) The term "judge" includes justice.

SEC. 6. This Act shall take effect on the thirtieth day after the date of its enactment.

EXTRACTS FROM THE REPORT OF SOLICITOR GENERAL STANLEY REED.

(Reprinted from the New York Herald Tribune of February 8, 1937.)

"During its October term, 1935, the Supreme Court disposed of 986 cases on the appellate docket, a larger number of appellate dispositions than at any of the ten preceding terms, except the 1933 term, when 1,025 cases were disposed of. Every case argued or submitted at the term was disposed of before adjournment," Mr. Reed reported.

"Only ninety cases remained for disposition, these being carried over to the succeeding term, commencing October 5, 1936. Of these, one was docketed in January, 1935, one in February, nineteen in March, twenty-five in April and forty-four in May, the term ending June 1. The work of the Court is current and cases are heard as soon after records have been printed as briefs can be prepared.

"Prompt hearings and decisions were had in all cases of large public interest.

"Whenever necessary to prevent delay, the Court expedites the hearing of criminal cases, which action has the effect of discouraging petitions for writs of certiorari designed to delay the execution of sentence."

Here the report cited steps taken to minimize delay in the administration of criminal justice in the Federal courts on rules promulgated by the Supreme Court.

"One of the principal factors which has enabled the Supreme Court to keep abreast of its own appellate docket was the passage of the jurisdictional act of February 13, 1925, which broadened the court's discretionary jurisdiction on petition for writ of certiorari, and narrowed its obligatory jurisdiction on appeal. Without restricting the possibility of review, this act has enabled the

court to give more time to important legal issues, and has reduced routine demands upon it. The progress which the court has made in the prompt dispatch of current business since the enactment of that statute is indicated by the following table."

(This table showed 1,076 cases docketed in the term ending last June, and 986 cases disposed of, leaving 90 to be carried over, a uniform number.)

"It is interesting to note that a great number of cases were docketed at the last term, a greater number disposed of, and a smaller number carried over to the succeeding term, than at any other term since the enactment of the act of 1925, except the 1933 term.

"Intelligent consideration of the progress made by the court in clearing its docket requires separation of the court's discretionary and obligatory jurisdiction, for in the exercise of its discretionary jurisdiction the court may determine whether a case is worthy of review and decline to consider it if it is not. . . .

"It is of interest to note . . . that, although the percentage of cases arising under the court's obligatory jurisdiction rapidly decreased, and the percentage arising under the court's discretionary jurisdiction rapidly increased, immediately after the enactment of the act of 1925, the ratio of discretionary to obligatory cases has remained practically stationary during the last four terms. At the last term only 12 per cent of the appellate cases disposed of arose under its discretionary jurisdiction.

"Since so large a percentage of the business of the court arises under a jurisdiction which affords opportunity to litigants to present petitions for certiorari which do not set out adequate grounds for plenary consideration of the cases, it is not surprising to find that the high percentage of denials and dismissals of petitions for certiorari reached in the 1934 term was maintained in the 1935 term.

"Of the 986 appellate cases disposed of during the past term, 776 (79 per cent) were disposed of without oral argument, and 210 (21 per cent) were argued orally. Of the former, 717 cases, or 92 per cent, were disposed of by the denial or dismissal of petitions for writs of certiorari. In addition, ten cases in which the petitions for writs of certiorari had been granted were disposed of prior to argument, as were also two cases which were before the court on certificate.

"The remaining cases disposed of without oral argument consisted of forty-seven appeals, which were either dismissed or affirmed upon motion, or upon jurisdictional statement filed under Rule 12 (286 U. S. 602-604), which makes provision for examination and consideration prior to argument of the question of jurisdiction of the appeal or of its substantiality.

"The figures given in the preceding paragraph disclose the volume of time and labor expended by the court in the disposition of cases which do not reach a hearing on the merits. Rule 12,

which was adopted in 1928, and amended in 1932, has resulted in a great saving of time, both for the court and for counsel, but the figures again disclose that a very large majority of the cases on the appellate docket do not possess sufficient merit to warrant consideration on the merits.

"It is quite erroneous to regard the court as constituted for the correction of error in every case. In the exercise of its discretionary jurisdiction, under the Judiciary Act of 1925, it has become a court for the decision of important questions of general application, and for the settlement of conflicts in the decisions of other courts. The limitations of the court's statutory jurisdiction should be more carefully observed. Many petitions for writs of certiorari are filed, which in the light of settled practice must be regarded as entirely without merit."

THE ACTION OF THE JUNIOR BAR OF BOSTON ON THE PRESIDENT'S MESSAGE.

The Junior Bar Committee of the Boston Bar Association, on Saturday, February 6th, sent the following postal card notice to over 1200 lawyers in Boston who were listed in the legal directories as under 36 years of age.

> "The Junior Bar Committee of the Boston Bar Association wishes to obtain an expression of opinion from the younger members of the bar regarding the President's proposal that he be empowered to enlarge the membership of the Supreme Court of the United States to a total not exceeding fifteen.
>
> "An immediate reply is essential.
>
> JUNIOR BAR COMMITTEE,
> of the Boston Bar Association."

A return postal card form of ballot was attached reading as follows:

> (do)
> "I (do not) favor that portion of the Judiciary Reorganization bill which empowers the President to enlarge the membership of the Supreme Court of the United States to a total not exceeding fifteen.
> ....."

On February 10th, 489 replies had been received, of which 416 were opposed to the increase and 73 favored the increase.

The Junior Bar Committee, on February 10th, unanimously adopted the statement printed below, the substance of which with the results of the poll was telegraphed to the Massachusetts senators and representatives in Congress.

(CONTINUED ON PAGE 30)

THE NON-EXISTENT "POWERS" OF *DE FACTO* CONSTITUTIONAL OFFICERS — DRAFT OF A PETITION FOR A WRIT OF PROHIBITION, WHICH WAS NEVER FILED.

Now that we have again a legally constituted government in Massachusetts and the facts, which would have justified a writ of prohibition, have become past history, the draft of a petition for such a writ, which was ready for use, if occasion should arise, is printed for future reference and use by the bar, if Massachusetts should ever again be subjected to a *de facto* government. It is printed because there appears to be so much misunderstanding of the provisions of the constitution and of the law relating to the so-called "powers" of *de facto* officers—powers which do not exist but the purported exercise of which under some circumstances is protected from collateral attack by a rule of the common law which does not extend beyond the reason for its existence.

When this rule is relied on as if it protected the unlimited exercise of special constitutional powers relating to the judiciary and not within the reason of the rule, serious and far-reaching questions arise affecting the authority of the whole people of the Commonwealth as expressed in their constitution. There also appears to be much misunderstanding as to the nature of the procedure to prevent unwarranted attempts to exercise such powers. It is for this reason that the following draft is printed, as a suggestion for the future, with a brief memorandum in support of it.

The detailed account of the history of the constitutional provisions, the neglect of which resulted in a *de facto* government, was printed in the MASSACHUSETTS LAW QUARTERLY for February, 1935 (p. 12). It may interest the bar to know that that account was written as a result of a study of the subject, not only suggested, but urged, by a former attorney general of Massachusetts—the late Henry A. Wyman—who expressed the opinion within forty-eight hours after January 3rd, 1935, that the newly-elected governor, lieutenant governor and members of the council having failed to comply with "an explicit command from the people . . . to which all departments of government must conform" in taking the oath of office, were not legally qualified officers. He also stated with emphasis that he thought the history of, and reasons for, the constitutional requirement should be thoroughly and impartially studied and the conclusions of law stated in the interest of the public.

The petitions for writs which were actually filed in the Supreme Judicial Court within the last ten days of the late *de facto* administration against members of the *de facto* council by two district court justices were based primarily on lack of notice. The notices in those cases as alleged and verified in the petitions with copies annexed were dated "December 24th, 1936," mailed in Boston "on December 29, 1936 after one o'clock in the afternoon," received by the justices on December 30, 1936, and they contained notice of a meeting of the Governor and Council on "December 29, 1936 at 1 P. M. at which time I am directed to advise you an opportunity will be given you to be heard". The notice, therefore, was a notice of an opportunity to be heard at a meeting which had taken place before the notice was received. In view of such obvious lack of notice there was no occasion for petitions based on the broader grounds set forth in the following draft.

DRAFT OF A PETITION FOR A WRIT OF PROHIBITION WHICH WAS NEVER FILED.

To the Honorable the Justices of the Supreme Judicial Court:

Your petitioners, X and Y, as citizens and taxpayers of Massachusetts and as officers of the court, sworn to support the Constitution of the Commonwealth, on behalf of themselves and all other citizens of Massachusetts, respectfully represent:

First. That , justice of the Court, of "duly appointed, commissioned and sworn" to "hold office during good behavior" has received notice to appear at a hearing before the respondents at on the day of , 1936, on a question whether said justice should be "retired" under the 58th Amendment which provides that "the governor with the consent of the Council, may after due notice and hearing retire" judicial officers "because of advanced age or mental or physical disability".

That said justice has administered his office ever since he was appointed and is still administering it and challenges the jurisdiction of the respondents in the premises.

Second. That Article I, Chapter 6, of the Constitution has provided ever since 1780, and still provides, the mandatory requirement that "before he proceed to execute the duties of his place or office" the constitutional oath of office "shall be taken and subscribed by the governor, lieutenant governor, and councillors before the president of the Senate in the presence of the two houses of assembly".

Third. That ever since the Tenth Amendment was adopted in 1831 duly qualified officers who have been chosen to the offices above described by the expressed terms of the Tenth Amendment and since 1918 by the express terms of the Sixty-fourth Amendment have held their offices "until their successors are chosen *and qualified*".

Fourth. That the mandatory requirement in regard to this taking of the oath of office before the president of the Senate in the presence of both houses is not a directory or merely formal requirement but a carefully phrased provision of high importance containing "an explicit command from the people" . . . "to which all departments of government must conform in shaping their conduct", as was stated by the Justices in Advisory Opinion to the Senate reported in 237 Mass. 589, and in *Attorney General* v. *Methuen,* 236 Mass. 575, 576, and again in the Advisory Opinion of the Justices rendered to the house on June 11, 1936 (see 1936 Advanced Sheets, pp. 1282–1283).

Fifth. That at the State election in 1932 A was chosen governor, B was chosen lieutenant governor, and the respondents C, D and E, and five other persons, F, G, H, I and J were chosen members of the Executive Council and that said A, said B, said respondents C, D and E, and all of the other persons above mentioned, after the legislature had organized in January, 1932, and before they proceeded to execute the duties of their offices, took and subscribed the oath required by the Constitution "before the president of the Senate in the presence of the two houses of assembly" and thereupon became legally qualified in their respective offices.

Sixth. That at the State election of 1934 K of —— was chosen governor, the respondent L was chosen lieutenant governor, the respondents C, D, E, M, N, O, and said F and J, were chosen members of the Council.

Seventh. That it appears on the face of the public records of the Commonwealth in the Journals of the General Court that none of the persons above named and thus chosen at the State election of 1934 have ever "taken and subscribed" the oath of office "before the president of the Senate in the presence of the two houses of assembly" since the organization of the legislature in 1935 although two long legislative sessions have taken place since such organization and although attention was called to the need of compliance with the constitutional requirement in the public press on January 4, 1935, and at different times thereafter in 1935.

Eighth. That by reason of the failure to "qualify" by taking the oath of office as required by the Constitution said K never became the legally qualified governor, the respondent L never became the legally qualified lieutenant governor, and the respondents M, N and O never became legally qualified members of the Council.

Ninth. That said F resigned his office and said K, acting as *de facto* governor without constitutional authority, purported to appoint the respondent P as a member of the Council in his place as an interim appointment under the 25th Amendment to the Constitution, but by reason of the premises said P never became a legally chosen and qualified member of the Council with constitutional powers.

Tenth. That said J resigned his office and said K, acting as *de facto* governor without constitutional authority, purported to appoint the respondent R as a member of the Council in his place as an interim appointment under the said 25th Amendment, but by reason of the premises said R never became a legally chosen and qualified member of the Council with constitutional powers.

Eleventh. That by reason of the premises under the provisions of the 64th Amendment that "the governor, lieutenant governor and councillors shall hold their respective offices . . . until their successors are chosen and qualified", said A, B, and such of the persons above named as chosen and qualified members of the Council at the State election of 1932 as are still alive and have not resigned their offices are still the only legally qualified persons invested by the Constitution with all the authority conferred upon the duly qualified governor and Council by the Fifty-eighth Amendment.

Twelfth. That by reason of the premises said K and the respondents whenever purporting to act in the offices above referred to have no higher standing or authority than what are known in the law as "*de facto* officers" subject to all the limitations applicable to persons in such a position; that the Constitution of Massachusetts does not recognize persons as officers with all the powers incident to their office under the Constitution until they have qualified in the exact manner required as above stated; that the rules of law relative to the position and acts of "*de facto* officers" are simply rules of the common law based on the need of protecting the ordinary operations of government from collateral attack in individual cases; that "*de facto* officers" have no powers; but that because of the rules referred to some of their acts are not open to question; that these rules do not provide "*de facto* officers" with high special powers provided by the Constitution and not in any way connected with the ordinary functions of government.

Thirteenth. That the Constitution provides for three co-ordinate independent departments of the government in order to restrain the opportunities for arbitrary action by any one or more of the departments or individuals composing the departments; that the 29th and 30th Articles of the Bill of Rights and Article I of Chapter Three of the Frame of Government provided for an independent judiciary appointed to hold their offices "as long as they behave themselves well" or in the shorter phrase "during good

behavior", and the reason for this provision was stated in the 29th Article as follows:

> "It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit."

that the reason thus stated is applicable to all the courts of the Commonwealth as well as to the Supreme Judicial Court.

That the 58th Amendment adopted in 1918 did not alter the judicial tenure during good behavior. As the justices said in the opinion in 271 Mass. 574 "age and good behavior are unrelated matters" and the 58th Amendment when read in connection with the dominant provision for tenure means retirement *because of incapacity* resulting from "advanced age", etc.

Fourteenth. That the powers conferred only upon the duly qualified governor and Council by the 58th Amendment of deciding "after due notice and hearing" whether such incapacity exists as a ground for retirement are quasi-judicial powers of high importance so affecting the relations between the departments and the structure of the government that they are unique and entirely outside the range of powers the purported exercise of which by *de facto* officials is protected by any rules of law against challenge by petition for a writ of prohibition to prevent the breaking down of the government structure created for the protection of the people.

Fifteenth. That because of their failure to qualify, the said K, as "*de facto* governor", has no constitutional jurisdiction or authority to submit a proposal to retire a member of the judicial department under the 58th Amendment and the respondents have no jurisdiction or authority to consider or "consent" to such a proposal.

Sixteenth. That by reason of the premises and of the great public interest involved in maintaining the structure of the government embodying an independent judiciary, which public interest on behalf of the people of the Commonwealth it is the duty of the petitioners as citizens and officers of the Court to endeavor to protect by proper proceeding, the petitioners submit that the public interest requires that the respondents be prohibited from continuing with any proceeding in regard to said justice above referred to or any proceeding in regard to any other member of the judicial department under the 58th Amendment over which it appears on the public records of the General Court that said *de facto* governor and said respondents have no jurisdiction or authority. That there is no other adequate remedy for the protection of the public.

That there is no question of past action involved here, but simply a question of preventing a group of private individuals

from attempting to exercise constitutional quasi-judicial powers which on the face of the Constitution and of the public records of the General Court, they do not have.

WHEREFORE your petitioners pray that a Writ of Prohibition be issued prohibiting and restraining the respondents and each of them from acting individually or collectively upon any proposal to retire any judge which has been or may be submitted by the present *de facto* governor purporting to be submitted to the respondents as members of the Executive Council, a majority of whom are merely members *de facto*, and for such other relief and the issuance of such other process as the Court may deem necessary in the public interest under the constitutional authority of the Court and Section 3 of Chapter 211 of the General Laws "to the furtherance of justice and to the regular execution of the laws".

MEMORANDUM OF LAW IN SUPPORT OF THE DRAFT PETITION.

It has not been definitely decided in Massachusetts whether a writ of prohibition may be granted on petition of a stranger to the proceedings the prohibition of which is sought because of lack of jurisdiction.

See *Butler* v. *Selectmen*, 269 Mass. at p. 587. But in *Atty. Gen.* v. *Boston*, 123 Mass. at p. 479, Gray, C. J. said:

> "It is settled by modern decisions in England that when an inferior court is clearly exceeding its jurisdiction a writ of prohibition may be issued upon the application of any person, even a stranger to the proceedings below" (and without the intervention of the Attorney General).

(See also 116 U. S. at p. 176 and Knowlton, C. J. in *Kilby* v. *Selectmen*, 184 Mass. at p. 311).

In any event the issuance of the writ on application of a stranger is discretionary; but when the petitioner is a party directly involved in the unwarranted proceedings, as for instance if the judicial officer, involved in a proceeding described in the draft petition above set forth, should join as a petitioner, the writ would seem to be a matter of right. See *Conn. River R. R. Co.* v. *County Commissioners*, 127 Mass. 50.

For a brief history of the writ of prohibition, see 36 *Harvard Law Review* (for May, 1923) p. 863, and 26 *Harvard Law Review* 378.

Cf. Ferris *Extraordinary Remedies*, §§ 335–339, pp. 456–459.
Spelling *Injunctions and Other Extraordinary Remedies*, 2nd Ed., Vol. II, Book III, Chap. LV, pp. 1472–1486.
Roberts *Cases on Extraordinary Remedies*, 450 *et seq.*

The Executive Council is a distinct body and in giving its "consent" under the 58th Amendment after "due notice and hearing", to the retirement of a judicial officer it acts as a quasi-judicial tribunal independent of the governor. See Opinion of the Justices 190, Mass. 616. Such a quasi-judicial body exercising such a high constitutional function involving a member of a coordinate and independent department of the government with tenure "during good behavior" under the 29th article of the Bill of Rights and the third article of the Constitution must act strictly within its jurisdiction.

When a majority of such a body are merely *de facto* officials because of failure to qualify and they undertake to act upon a retirement submitted by a *de facto* governor, the question arises whether there is any rule of law which protects them from a writ of prohibition before they have completed their action, and whether their action if completed is protected against some other writ. When they have not acted there is no question of collateral attack upon their action. The attack is a preventive attack directed at their unwarranted exercise of a unique constitutional power involving another constitutional department.

We come now to the legal position of *de facto* officers and their so-called "powers". In *State* v. *Carroll*, 38 Comm. at p. 467, Chief Justice Butler said:

> "The *de facto* doctrine was introduced into the law as a matter of policy and necessity, to protect the interests of the public and individuals, where those interests were involved in the official acts of persons exercising the duties of an office, without being lawful officers. It was seen as was said in *Knowles* v. *Luce* (Moore 109), that the public could not reasonably be compelled to inquire into the title of an officer, nor be compelled to show a title, and these became settled principles in the law. But to protect those who dealt with such officers when apparent incumbents of offices under such apparent circumstances of reputation or color as would lead men to suppose they were legal officers, the law validated their acts as to the public and third persons, on the ground that, *as to them*, although not officers *de jure*, they were officers in fact, whose acts public policy required should be considered valid. *It was not because of any quality or character conferred upon the officer*, or attached to him by reason of any defective election or appointment, but a name or character given to his acts by the law, for the purpose of validating them. When, therefore, in civil cases, the public or third persons had knowledge that the officer

was not an officer *de jure*, the reason for validating the acts to which they submitted, or which they invoked, failed, and the law no longer protected them."

In *State ex rel.* v. *Perkins*, 139 Mo. 106 at p. 117, the court said:

"However much color of authority may clothe the person who assumes to perform the functions of an office . . . yet if the public or third persons are not *deceived* thereby, if they know the true state of the case, the reason which gives origin or existence to the rule . . . ceases and with it cease also all of its ordinary validating incidents and consequences."

In *Carpenter* v. *Clark*, 217 Mich. at p. 71, the court said:

"A person may be a *de facto* officer to the general public or to innocent third persons but not such where his own rights are involved nor to those fully advised of his status nor against one showing a *prima facie* right to an office he unlawfully holds" and the court quoted Judge Cooley as saying "the party himself who had usurped a public office is never allowed to build up rights, or to shield himself from responsibility on no better basis than his usurpation."

In *Nichols* v. *McLean*, 101 N. Y. 526 at p. 539, the court after citing Cro. Eliz. 699, said:

"I have been unable to find any case which sustains the claim that an illegal exercise of the power of appointment to office, by an executive officer to fill an assumed vacancy, confers additional protection upon the appointee, because coupled with the fact of a prior summary removal of the rightful incumbent by the same officer in the exercise of a *quasi-judicial* discretion."

In *Colburn* v. *Ellis*, 5 Mass. 427 it was held that an officer who failed to qualify may not, in an action of trespass, justify for an act done *colore officii*.

There are many other cases about *de facto* officers but these extracts seem sufficient to sustain the draft petition, by showing that the reason for the rule and, therefore, the rule protecting the acts of *de facto* officers, do not apply to the *threatened* exercise of a unique constitutional power by *de facto* officers of one of the three departments of government to create vacancies in another coordinate department by the removal of duly qualified *de jure* officers, when the lack of authority arises from the publicly recorded, publicly known, and publicly discussed, disregard of a positive constitutional mandate of one hundred and fifty years standing. It should also be noted that the lack of jurisdiction arose not only

from the *de facto* character of the council but also from the *de facto* character of the chief executive having no constitutional authority to initiate proceedings under the 58th Amendment for the "consent" of the council, so that there was a double-barreled defect in jurisdiction.

We submit that there would be no defect whatsoever, and no adequate authority on which to claim a defense, to a petition for a writ of prohibition, such as that of which a draft is printed above, on the facts therein stated, and that such a writ would be within the discretion of the court on petition of a member or members of the bar, and a matter of right on petition of a judge who was directly involved in the threatened proceedings. (See *Smith* v. *Whitney*, 116 U. S. 167; *Curtis* v. *Cornish*, 109 Me. 384.)

For the history of the 58th Amendment see debates of the Convention of 1917–19, Vol. I, 948–1028 and MASSACHUSETTS LAW QUARTERLY for July, 1936, pp. 42–44.

F. W. G.

(CONTINUED FROM PAGE 21)

Statement of the Junior Bar Committee.

The younger members of the bar are vitally concerned in the President's proposal to reorganize the Federal judicial system. In the future they will have much of the responsibility for administering the law of this country. The strength of that law will largely lie in the integrity of the Federal courts, and those courts depend directly for their authority upon the Supreme Court of the United States.

The President's request that the Supreme Court be enlarged by six new justices is not a proposal for enlargement alone. The resignations which would probably follow its result would be the replacement of the present Court by a body of unknown character and size.

So great a change requires conclusive reasons. None that the President has given can be considered conclusive, and some fail to accord with fact.

The Court acts as a single body, all justices hearing every argument and participating together in each decision. The suggestion that this work can be better discharged by a cumbersome group of twelve or fifteen is ill considered. The relation between age and judicial capacity is at best controversial. The charge that

the present Court, overwhelmed with business, does not administer full justice to private litigants is wholly denied by the official report of the Solicitor General made public within the week.

But it is only wilful blindness to consider the proposal as one to increase the Supreme Court's capacity for service. The true purpose is everywhere known and acknowledged: to change the present Court so that its views will be in accord with those of the present Administration.

Regarded as a political expedient, this proposed revision of the Supreme Court cannot be defended. It would shatter the public confidence in this Court as an independent judicial body, and every court in the nation would suffer. Under this precedent many decisions would be related to administrative favor. Another Administration, with different policies, could rely on the precedent to shift the Court again by similar means. There can be only one result of this procedure: the reduction of the Supreme Court of the United States to political subservience. Once this is accomplished, freedom of religion, of speech, and of the press, and every liberty of the citizens will be at the mercy of any group in temporary control of the machinery of the Federal government.

The members of this committee are sharply divided in their political and economic views. With some of the President's recommendations they are in sympathy. But on the question of enlarging the Supreme Court they are unanimous in their opinion that every consideration of the national welfare demands that the President's request be denied. To this end they urge each Senator and Representative of this Commonwealth to exert his utmost influence.

THE SPECIAL COMMITTEE ON JUNIOR MEMBERS OF THE BAR ASSOCIATION OF THE CITY OF BOSTON.

CHARLES F. DUNBAR, *Chairman.*
ERNEST G. ANGEVINE.
TALCOTT M. BANKS, JR.
JOSEPH K. COLLINS.
RICHARD H. FIELD.
PAUL B. SARGENT.
ARTHUR L. SHERIN.
C. RUSSELL WALTON.

A Message to Wisconsin Lawyers

Address by President R. B. Graves, Wisconsin Rapids, Before the Legal Clinic Sponsored by the Milwaukee Bar Association, at the Elks Club, Milwaukee, October 28, 1936

Reprinted from the Bulletin of the State Bar Association of Wisconsin for November 1936.

(After introductory remarks:)

I feel, however, I must upon this occasion bring to you a word from the State Association of which I believe a great majority of you are members. I think that every member who has followed the affairs of the State Association must agree that we have made much progress, and are becoming more and more a helpful factor in promoting the public interest as well as that of the lawyers of the state.

That we have accomplished immeasurably more through the agency of a state organization in both of these fields than was possible by unorganized individual efforts will not be denied. And yet we must all admit that our efforts and accomplishments have been puny indeed, as compared with what they should and could be.

The membership of the State Association is but 1,800 lawyers out of a total slightly less than 3,500 in the state.

Further, comparatively few of its members are active in the interest of the profession as a whole. Altogether too few are organization minded. They are content to let the fortunes of their professions drift with the tide, buffeted about by adverse public criticism. They pay their dues to their local, state and national associations. They occasionally, but not religiously, attend and take a passing interest in local and state meetings. They enjoy the food and sometimes the programs. They may even lend their names for committee appointments—but their names only. They feel and share no responsibilities because of their membership. To them it is just another lodge to which they belong.

Apathy toward the organized promotion of their profession's cause is widespread. Shirking of their public duties as members of the bar is a general and chronic condition. I am not scolding. I am not finding fault. It is a condition inevitable and unavoidable in any and all voluntary organizations.

Is this a condition important to remedy? Is there need for and benefit to be derived from professional organization? The negative of these questions may not be reasonably argued.

The legal profession contributes, and should be willing and qualified to contribute, more toward the maintenance and advancement of the social and economic welfare of the governments than any other agency. The members are an indispensable part of the system for the administration of the laws. The history of our nation and our every-day experiences evidence that fact. The proper and efficient administration of justice is a trust committed to the individual members of the bar. The profession collectively is held responsible in the public mind for the proper performance of that trust by its individual members.

Without organization there is no coordination of activities, there is no uniform standard of conduct and duty, there is no position of power and influence. There is no idealism.

At present there is in Wisconsin no entity entitled to be called or referred to as "The Bar", altho the concept of the public and many times of the press seems to be that we are an institution to be held responsible and criticized for the derelictions of any who may by chance be engaged in earning their living by the practise of the law. We all because of that coincidence are very apt to be looked upon by an uninformed public as a common specie, whose natural trait is to lie and cheat for their clients, to suborn perjury and otherwise obstruct the administration of justice. If we are to be considered and held responsible as an institution, let us be one. That can be accomplished only through complete and intelligent organization. Then and only then will we be able to accomplish the rehabilitation of our profession in the estimation of the public and again gain the prestige and influence that is the rightful heritage of the profession of the law. Then and only then will we be able to effectively, and in a manner to merit the respect and approval of all, administer the trust committed to us.

I do not believe there is a lawyer in the state worthy of the name who would want our present bar association dissolved and the efforts it is now putting forth abandoned, unless a better one could be substituted.

It is engaged in many fields of activity both in the public interest and in advancing the personal interests of the individual lawyer.

The grievance committee, altho without a vestige of power to purge the bar of unworthy and erring members, has by its handling of complaints done much to advance the interests of

the public and of the profession. Complaints presented found to have merit are referred for action to the Bar Commissioners, the only agency now authorized to institute disciplinary proceedings. Despite the lack of power the Association, through such committee, has and does exercise a wholesome influence.

The Committee on Judicial Selection is dealing with a subject that merits the best thought of every member of the bar. It is a subject that is commanding the attention of every bar association and of many lay organizations. The selection of judges either by an uninformed electorate or by political appointment without regard to individual qualifications, is wrong in theory, and should not continue indefinitely unchallanged.

A valuable public service is performed by the Committee on the Unauthorized Practise of the Law. Much avoidable litigation results and private losses are incurred by invasion by lay agencies in the field rightfully belonging to the trained lawyer. The public is entitled to be protected against this evil. It can only be eradicated through organized efforts. By that means only can the law business be given back to the lawyers.

The drafting of a modern criminal code and a complete revision of the laws relating to corporate organizations are being undertaken by committees made up of lawyers highly qualified in such subjects. They are giving of their time and efforts to the accomplishment of this much needed public service.

Much additional similar work may be undertaken as time and the resources of the Association will permit.

The Legislative Committee performs valuable services and has frequently been effective to prevent the passage of useless and ill advised laws. Albeit the efforts of the Association in the field of legislation are sorely hampered and too often fail of success because of suspicion born of ignorance and because a united bar is not back of them.

The advancements made in procedural law may be credited to the Bar Association.

The teaching of the Constitution and American Citizenship in the public schools, the raising of the standards for the admission to the bar, are worth while subjects which are being dealt with.

Many other important and beneficial activities are sponsored.

If the State Bar Association has grown in members and in power and given some measure of prestige to the profession

of the law in Wisconsin as a result of the voluntary efforts of a small proportion of the entire bar, how tremendously could its accomplishments be broadened and extended by the inclusion of all.

But that can never be accomplished so long as the State Bar Association continues a voluntary organization.

Nor can the greatest efficiency be attained until the entire membership is awakened to the necessity of bar organization and every lawyer makes up his mind to become a useful member.

Until we can command the active and interested support of the rank and file, our advancement will be slow and our efforts to exalt the position and prestige of the profession of the law will be futile.

The solution manifestly is to integrate and unify not only the bar of Wisconsin but of every state of the Union. Only by that means may we become in the true sense of the word an entity deserving of the name "The Bar". Only by that means will needed reforms be accomplished, the wrongs done the lawyers righted, and the esteem and credit to which we aspire be bestowed by public opinion.

But integration is only a means to an end. It is no magic formula that will work the regeneration of the legal profession overnight. It is merely the first, but an absolutely essential, step toward the awakening of the lawyers to a realization that they must stand as a unit to promote their common cause. While due to our environment, the diversity of our practises and our training it may not be said we are of the same genus, having like points of view, habits, interests or problems, yet we all have a common cause and a common duty, the maintenance of our individual integrity and our contribution to the proper administration of justice.

An integrated bar contemplates a self governing bar, a unit upon which is conferred the power and authority to administer its own affairs in the public interest subject to such limitations and restrictions as may reasonably be imposed. Not until that has been brought about can the lawyers or the legal profession as an institution be held responsible for or justly indicted for the failure of any individual lawyer to perform what public opinion conceives to be the standard of conduct that must be followed by members of the bar.

To what extent the prestige and traditions of the profession will be rehabilitated through integration depends upon the individual members. Each has an equal voice and responsibility in the management and administration of its affairs.

The standard of ethics to be adopted and the rigidness of their enforcement, the qualifications for admission to practise, the elimination of those unfit to practise, whether they be licensed practitioners or laymen, are all responsibilities of an integrated bar.

The lawyers of Wisconsin are asking, yes demanding, that they be permitted to assume these responsibilities. That they have not been able to assume them is due to no fault of theirs.

What motives actuated those members of the last legislature who opposed and obstructed the passage of the bar bill is an unsolved mystery. In what manner, if any, the political fortunes of any person or of any class were thought to be injuriously affected, taxes our power of imagination. No rational arguments were advanced in opposition.

No justification for the veto appeared in the veto message of the then Lieutenant Governor. It consisted of the equivalent of but ten printed lines. The pretended grounds were three in number, which I will quote verbatim:

First: It will destroy local bar associations.

Bar Integration will in fact mean the resurrection and the life of local bar associations. Local bar associations are a required, necessary cog in the organization machinery after integration.

Second: It places great power in the hands of the few and injury to the entire profession may result from such concentration of power.

The contrary will be true. Under integration the power will rest with the rank and file to be exercised as they see fit. Every member has an equal voice. No class or clique of lawyers can possibly have sufficient power to influence or control the action or policy of the bar of Wisconsin, even though we could imagine such an impossible desire.

Third: The measure might increase expense unnecessarily to members of the bar and to the public.

This is the first instance I have known of anyone, except a lawyer, being concerned over a lawyer's expenses. The inanity of this third reason is shown by the statement that the bill vetoed authorized annual dues of not to exceed five dollars. The suggestion that there would be expenses imposed upon the public is equally frivolous and unexplainable. The exclusion from the bill of any provision creating a public expense was a recognition of the fact that the legislature could be depended upon to take care of the matter of public expense.

But the only importance of this now is that it demonstrates that not one sensible reason could be advanced for the defeat of this legislation.

Our past experience is important only as it may aid our effort in securing the passage by the next legislature of a proper bar bill.

The purpose of my remarks tonight have not been to convince those present of the soundness of the reasons for bar integration nor to win the favor of the members of the bar to that cause. I think we are far beyond that point. The subject has been thoroughly discussed by and with the lawyers of the state. All should be familiar with the subject. All should know that we are not proposing an experiment or making vain claims as to the benefits that may result. Seventeen states have pioneered the way. Their successful experience should silence all opposition. The subject has become *res adjudicata*. But here there has been no dissent of consequence from the lawyers. There has been no active opposition from them to the program sponsored by the State Association.

The few who have not given the movement their whole hearted support and approval include those who have not given the subject disinterested and thorough consideration or those who are fearful that they will not be able to survive the regenerative processes that are believed will take place. There were and may still be a few who have withheld their approval because they saw a threatened exercise of power over them in connection with what they conceived to be a constitutional right to practise law. The lawyer in them immediately found food for argument and they began talking about interference with personal liberty and vested rights, in disregard and ignorance of court decisions upholding the validity of various integration acts. They resented being required to become a member of a bar association, although they have been for years members of a voluntary association which has aspired to the ideals capable of accomplishment only by, and which are the primary purpose of, bar integration. To that class belonged those whose integrity and ideals are the highest. Their professional standards are those which this movement aims to establish as the hall mark of the profession as a whole.

That class of lawyers offered no active opposition, but were at times a discouraging influence, which I think now has practically disappeared.

We are justified in assuming that there is no great need for missionary work among the lawyers to win their support to this cause.

However, not infrequently do we all hear a lawyer say, in spite of all that has been said and written, that he does not know much about the subject.

My hope and purpose tonight is to impress all present with the thought that the State Bar Association as now constituted more than ever before needs your support and influence. The officers of the association are determined to exhaust every effort to secure the enactment of legislation this winter that will result in the integration of the bar in Wisconsin. Our efforts will prove futile, however, unless we have the whole hearted support of the lawyers of the state.

I am not asking merely that you favor the State Association's program in this and in other respects, but I want you to become enthusiastic about it, and so enthusiastic that you each will go out and personally do something about it. You are all on the squad, we want you to get in the line and help carry the ball.

Become interested and active in bar association work. I heard lately a prominent lawyer say, "One criticism of the State Bar Association was that it was run by a clique of lawyers". Yes, that in a sense may be true, but the clique is made up of every lawyer in the state who has the interest of the Association sufficiently at heart to prompt him to give every possible assistance in furtherance of its objects and purposes. It is now a fairly large clique and there is no limit to the number that may join.

It always has been a struggle for the officers to get the active assistance and cooperation which is desired and essential in order to make the administration successful and efficient. It is almost impossible to get a working membership on the various committees. Whatever sacrifices are made are amply compensated by the satisfaction of having performed a worth while duty and the helpful and lasting friendships that are made as a result of associations made in the cause of your profession.

To those younger members of the bar whose excuse for failure to take part in association work is that they are not established and do not feel they can afford to spend the necessary time, I wish to say this: I know of no one greater aid to becoming established in the profession of the law than by taking an active and helpful part in local and state bar association matters. You gain a wider and closer acquaintance with the older members of the bar which many times will prove valuable in your practise. Further, by your efforts in bar association work you gain public favor and approval. Any young

attorney who is known to be actively identified in a cause that looks to the betterment and raising of the standards of the profession and which is seeking to improve the administration of justice, is entitled to and will command public respect and admiration.

And to the older members of the bar who are established and whose excuse for their non-participation in activities is that they are too busy, I have this to say: You are not too busy. You would not be too busy even if you were the personal attorney of John Doe himself. Let the business of your non-paying clients go. You may more profitably devote your time to the cause of the profession responsible for your success. Your counsel and your efforts are indispensable to the successful functioning of your state and local associations. Your contacts in connection with such work with the younger members of the bar will be good medicine for what ails you. You will be working in a worthy cause with worthy associates.

I am urging you all, if you have not done so before, to put the cause of your profession, in these days when it is maligned from every side, above your own selfish interests. If this be done, if every one contributes as his power and opportunity permits, there can be no question as to the outcome of the program of the State Association to accomplish the integration of the bar. And when that occurs I have no misgivings about the lawyers in Wisconsin meeting the responsibilities imposed upon them. It will supply the leadership necessary for the accomplishment of all of the benefits that are possible to be achieved by a unified self-governing bar. We will then soon be able to demonstrate to all what we, and I think a fair proportion of the public, now know, that the Bar of Wisconsin is and always has been, with negligible exceptions, made up of men and women of character, who adhere to a standard of ethics, incomparably higher than that of any other profession or calling, and who contribute indispensably to the social and economic welfare.

STATE BAR INTEGRATION

Proved by Experience

A Symposium

Addresses Delivered at the Convention of The American Bar Association Held in Boston, August 1936

Published by the Conference of Bar Association Delegates
A Section of the American Bar Association
1936

Selected Bibliography

NOTE: The articles listed below are all to be found in the files of the American Bar Associatio Journal and the Journal of the American Judicature Society. Many other articles and addresses o value have been published in bar association reports and journals but these reports and files of jou nals are virtually inaccessible to the persons who would most profit by them. The two journals he referred to are available in all public law libraries and back numbers are obtainable. Only the cita tions considered fairly important are included. They are given in chronological order.

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State Bar Integration

Introduction

This publication was authorized by the Conference of Bar Association Delegates at its twenty-first annual meeting held in Boston, August 24-25, 1936, in conjunction with the American Bar Association. A wide circulation is being given to the pamphlet and copies will be available to all interested persons on application to the American Bar Association, 1140 North Dearborn, Chicago, or to Herbert Harley, Secretary, Law School, Ann Arbor, Michigan.

The history of the Conference and of the Bar Integration movement are closely related. At the 1919 meeting of the Conference, presided over by Mr. Elihu Root, as chairman, the subject of state bar integration was presented by Mr. Harley (later secretary), and a committee headed by Judge Clarence N. Goodwin was appointed. That committee has functioned actively ever since, with Mr. Carl V. Essery and Mr. Carl B. Rix as succeeding chairmen. With the authorization of the Conference the Committee prepared the first compilation of State Bar Acts Annotated (including model and proposed acts); in 1934 the compilation was circulated in its second and enlarged form; in 1936 the Third Edition of State Bar Acts was published, and copies will be available for a considerable period.

This compilation has been of the utmost value to draftsmen in many states. The latest edition illustrates acts drafted according to three established principles.

The publication herewith of addresses concerning actual accomplishment in certain states having integrated bars, delivered at its last meeting, held August 25, 1936, was authorized by the Conference of Delegates as its last act. No better proof of the desirability of State Bar Integration is needed than the unanimous testimony of bar leaders concerning the successful experience in the eighteen states now having the incorporated bar. In not one of these states is there a disposition to abandon integration and return to professional *laissez faire*. It is hoped that the authoritative statements contained in this pamphlet will be of value to the profession in the thirty other states where adoption of State Bar Integration is now under consideration.

A fitting preface to these addresses is the concise summing up by Committee Chairman Carl B. Rix, although it came as a conclusion to the symposium.

E. Smythe Gambrell,
Chairman of Conference of Bar Association Delegates of American Bar Association 1935-1936.

Striving Toward One Hundred Percent Integration

By Carl B. Rix*

The case of the states having Integrated Bars against the states not having such Integrated Bars was laid before you this morning.

There is a singular fact that, while we selected various states out of the common experience of the eighteen states having Integrated Bars, we might have selected a representative of any one of those states.

No state having an Integrated Bar has ever retreated, and there is absolutely no prospect of retreat. Our problem becomes clearer as we go on.

The action of the Assembly of the American Bar Association yesterday in approving the plan of co-ordination, which as you know, is a plan of *co-ordination of effort*, is but the beginning of the ultimate aim.

That aim is to enlist the interest and the support of the active effort of *every* practicing lawyer in the United States.

Of course, we can't expect a one hundred per cent membership of the lawyers of this country in the American Bar Association. But, don't you see how easy it is now to achieve our objects if we secure through the delegate system which was set up yesterday, one hundred per cent membership and representation of each State Bar Association?

What are we going to do with that magnificent opportunity to secure the real unity of the American Bar?

Are we going to carry back into our states the consciousness that there is a movement in those

*Of the Milwaukee Bar; Chairman, Conference of Delegates Committee on Bar Integration.

states having Integrated Bars which we cannot escape, and the responsibility for which we cannot also escape?

It is a task which is not an easy one, as we move eastward, into the denser portions of the country. We are under no illusions whatever as to the difficulty of the task and as to the necessity for an absolutely down-to-the-ground campaign of education, first among the members of your own Bar, by conference, by dissemination of literature, by meetings, by iteration and reiteration of the problem which is before us.

It is that task which I hope the Section which succeeds this one will take up actively, and I can promise you that the officers of your Conference under whatever name it is called, will aid you in that task.

We have laid the case before you.

It is a case and a record of accomplishment which must be carried out to secure the ultimate aim of one hundred per cent co-operation of effort of the lawyers in this country.

Bar Integration in California

By CHARLES A. BEARDSLEY*

Your chairman has instructed me to give a complete account of the conditions that gave rise to bar integration in California, of the ways and means by which bar integration was accomplished, of the structural form and method of operation of our integrated bar, and of the results of bar integration in my state. And he has instructed me to do all this in not to exceed ten minutes.

Apparently he expects me to use as the model for my remarks the school boy's essay on Elijah: "There was a man named Elijah. He had some bears and lived in a cave. Some boys tormented him. He said 'If you keep on throwing stones at me, I'll turn the bears on you and they'll eat you up.' And they did and he did and the bears did."

In California we had a few million people and a few thousand lawyers. The people did business with a few hundred banks. The people did not like the legal service that was provided by the lawyers, and they did not like many of the lawyers. Finally, the people said to the lawyers: "If you keep on providing us with legal service that is unsatisfactory to us, we will turn the banks on you, and they will provide us with legal service." And we did, and they did, and the banks did.

So much for the conditions that gave rise to bar integration in California—now for the ways and means by which it was accomplished.

It was accomplished by hard work by members of the bar, working mainly through a committee of the voluntary state bar association. They carried on a campaign of education, first with other members of the bar, and then with representatives of the press and with members of the legislature. The most effective work with members of the legislature was done in their home towns, in co-operation with local lawyers who had been converted to the cause of bar integration.

So much for the ways and means by which bar integration was accomplished in California—now for the structural form and method of operation of our integrated bar.

In 1927 the California legislature passed a statute known as the State Bar Act, creating a public corporation known as The State Bar of California, comprising within its membership every person entitled to practice law in the state.

This public corporation is governed by a board of fifteen governors, elected by the members of the bar by mail ballot. The board of governors meets every month, each meeting lasting from two to four days; the board elects the president of the State Bar and its other officers; and it conducts the affairs of the State Bar very much as the board of directors of a private corporation conducts its affairs.

The members are required to pay annual dues, which are fixed by the board of governors at seven dollars and fifty cents; and non-payment results in a suspension from practice.

The State Bar is vested with governmental authority sufficient to enable the lawyers of the state, acting through the state bar, to do those things as to which voluntary bar associations can only agitate and resolve.

The State Bar maintains two fully staffed offices—the main office in San Francisco, and a branch office in Los Angeles. And it publishes a monthly State Bar Journal that is mailed to all members of the bar, the subscription price being included in the annual dues.

The State Bar functions largely through committees, appointed by the board of governors, including a committee of bar examiners which conducts examinations and passes upon all applications for admission to the bar, and local administrative committees in every county which investigate all complaints against lawyers and try all disciplinary cases, and numerous other committees which deal with the various problems relating to the improvement of the administration of justice and other problems that concern the legal profession. Approximately one thousand lawyers, working as members of these commit-

*Of the Oakland Bar; former President of the California State Bar; member of the Board of Governors of the American Bar Association.

tees, and in other representative capacities, are contributing their services, without compensation, to the work of the State Bar.

Each year the State Bar holds an annual meeting, at which the members attend in much larger numbers than ever attended an annual meeting of the now defunct voluntary state bar association, and at which meetings the proceedings evidence the keen interest of the membership of the bar in the solution of the problems that concern the legal profession, and a general recognition of the fact that the integrated bar is well adapted to the solution of those problems.

Results in California

So much for the structural form and method of operation of the California integrated bar—and now for a brief mention of some of the results of bar integration in California.

Probably the outstanding activity of the State Bar, and the one that has produced the most far reaching results has to do with the establishing and enforcing of professional standards.

During the seventy-seven years during which California was a state before the State Bar was organized, disciplinary proceedings resulting in suspension or disbarment of lawyers averaged one each three years. Since the State Bar was organized, they have averaged twenty per year—an increase of six thousand percent. Notwithstanding this increase in the rate at which unfit lawyers have been suspended and disbarred, suspensions and disbarments have resulted from less than five percent of the complaints received and investigated by the State Bar.

During the first few years of the functioning of the State Bar, the State Bar organization received and disposed of more than twelve hundred complaints per year, more than one hundred per month, more than four each working day.

Each one of these complaints evidenced a grievance against an individual lawyer. Practically all of them evidenced a grievance against all lawyers. And many of them evidenced a grievance against the courts, against the administration of justice and against society.

Each complainant liberally shared his or her grievance with relatives, neighbors, friends and acquaintances. And in the aggregate, these twelve hundred complaints per year evidenced innumerable sore points in society, against individual lawyers, and in practically all instances against all lawyers.

The State Bar has given each complainant a hearing. In the great majority of cases, it has been able to remove the cause of the grievance, whether that cause has been the fault of the lawyer, or the fault of the client, or nobody's fault. Thus it has made friends of the complainants, and has removed the sore points that were evidenced by the complainants.

A Solemn Referendum

Shortly before the State Bar was organized, we had a referendum election, at which the people voted on a statute purporting to deny to the banks the right to do some things that constituted the practice of law. The lawyers and the banks carried on a vigorous campaign, in their respective bids for public favor. And when the vote was counted, it stood: For the banks, 555,522; and for the lawyers, 197,905.

Every one of these innumerable sore points in society, evidenced by twelve hundred complaints per year, represented a block of votes in favor of the banks and against the lawyers, as well as a block of eager purchasers of substitutes for lawyers' services, and fertile soil for the production of public disrespect for lawyers.

In California, the lawyers have recognized that there is no sure and permanent way of gaining more public respect, except by deserving more public respect. And they have recognized that there is no sure and permanent way of increasing the public demand for the services that they desire to sell, except by improving the quality of those services.

And, through the instrumentality of the integrated bar, the lawyers of California have made the bar more worthy of respect and therefore more respected; they have improved the quality of the service that they render to the members of society; and they have thereby increased the public demand for that service.

They are serving the public better, and they are thereby fulfilling the primary purpose of the integrated bar. And at the same time, and by the same means, they are greatly enriching the legal profession, without impoverishing any other group, or any individual.

Proof of Better Public Relations

The change in the public attitude toward the bar is evidenced in many ways.

It is evidenced by the disposition of the legislature to accept, and to act favorably upon, the recommendations of the State Bar, on legislation relating to the bar, to the courts and to the administration of justice.

It is evidenced by the disinclination of the banks, and of the other potential lay encroachers, to take issue with the State Bar on any matter relating to their respective fields of activity.

And it is evidenced most conspicuously by the attitude of the press, which almost uniformly is generous and outspoken in its support and in its praise. Typical of the attitude of the press is an editorial comment on the work of the State Bar in the Hanford Daily Sentinel:

"There are signs of a new life in the California bar. It appears that the law fraternity has received a new vision of its responsibilities, new faith in its inherent goodness, renewed courage to attack its problems. It is the most hopeful sign that has come into the life of the state in over half a century."

Reverting to the model with which I started—the school boy's essay on Elijah:

In California the lawyers told the legislature that, if it would give them a self-governing bar

act, they would govern themselves for the benefit of the public, that they would raise the moral and educational standards of the bar, that they would serve the public better. And the banks said that, if the lawyers did that, they would respect the rights of the lawyers and would confine their own activities to functions outside of the practice of law. And the people said to the lawyers that, if they did that, the people would respect the lawyers more, would have more confidence in the lawyers, would buy more of their legal services. And the legislatures did, and the lawyers did, and the banks did, and the people did.

The Eldest Fully Organized Bar—Alabama

By Douglas Arant*

The Bar of Alabama was organized by statute in 1923. I am under the impression that Alabama was the first state which incorporated its bar.

I should like first to mention briefly the condition which led to the establishment of the self-governing Bar in Alabama. Violations of the code of ethics and the statutory rules of conduct became so flagrant and notorious in some instances that some of the members of the Bar were impelled to initiate disciplinary proceedings, and the only forum then available was the Circuit Court, in which by statute a trial by jury was provided. For the purpose of gaining the sympathy of the juries, many issues foreign to those really involved were injected into such proceedings, and acquittal usually resulted in spite of flagrant guilt. From such experiences it became obvious to those interested in purging the profession of unworthy members that the existing procedure was an insuperable barrier to progress. The ultimate result, following prolonged efforts devoted to reform, was the enactment in 1923 of the act providing for an integrated Bar. The original statute has been amended from time to time to overcome objections suggested by experience in its administration.

Virtually all progressive legislation having as its only objective the public welfare owes its existence, I suppose, to the unselfish, earnest and sustained efforts of some devoted advocate or group of advocates in or out of the legislative body. Our experience in this connection was no exception to this general rule. The constant and prolonged efforts of a few lawyers, aided by legislators with influence, integrity and qualities of leadership, found their ultimate fruition in the enactment of the statute conferring upon the Bar the power to govern itself. Without the organized and constant work of this small group, the act would not have been passed. Before the introduction of the bill in the legislature they explained and advocated it to lawyers and members of the legislature, and they devoted much time to its presentation before legislative committees.

The statute provides that the lawyers in good standing in each of the twenty-three judicial circuits shall elect from their number a member of the governing board known as the Board of Commissioners of the State Bar. Each member of the Board is elected for three years, and the terms of office expire at different times. Five members of the Bar in good standing may nominate a member of the Board, or any member of the Bar in good standing may become a candidate on his own initiative. Election is by secret ballot by mail. The feature of voting by mail is regarded as important for the reason that every member of the Bar is thus afforded the opportunity without personal effort or inconvenience to have a voice in the conduct of the affairs of the Bar. Through such a plan of election the Board of Commissioners is as truly representative as it can be made. The possibility of government by a group or clique is thus eliminated. Every lawyer is required by law to pay annually to the appropriate state official a license tax of $25.00, $15.00 of which becomes a part of the public revenue of the state, and $10.00 of which is paid into a fund to defray the expense of the organized Bar. Only those by whom the tax is paid are members of the Bar in good standing. Each lawyer by whom the tax is paid is a member of the Bar and also a member of the State Bar Association. The membership of the Association therefore is co-extensive with that of the Bar itself. A secretary, elected annually by the Board, is the only officer who receives compensation, except the members of the Board of Bar Examiners who likewise are elected by the Board. The Commissioners are allowed necessary expenses for traveling and subsistence while in the performance of their official duties. A secretary who devotes all or a substantial part of his time to the affairs of the Bar is essential, in my judgment, in its efficient functioning.

The State Bar Association holds an annual meeting at which the members present elect a president as is customary in voluntary associations. The President of the State Bar Associ-

*Of the Birmingham Bar; former Secretary, now President, of the Alabama State Bar.

tion is *ex officio* President of the Board of Commissioners, and he performs the customary duties of a presiding officer, except that at meetings of the Board he votes only in the event of a tie, unless it happens that a member of the Board is also the President.

Upon the Board is conferred plenary power to determine qualifications for admission and to admit to the Bar, except in the case of graduates of the School of Law of the State University. Their graduation entitles them to become members of the Bar upon the approval of the Committee on Character and Fitness of the Board of Commissioners. Applications for admission by persons other than graduates of the School of Law of the State University must first be approved by the Committee on Character and fitness, and such applicants must then satisfactorily pass an examination conducted by the Board of Examiners. In the exercise of its power relating to admissions, the Board of Commissioners has raised the legal and pre-legal requirements so that applicants in the future must comply with the standards approved by the American Bar Association.

The Board of Commissioners is authorized by statute to formulate rules of conduct and rules of procedure in disciplinary proceedings. Such rules must be approved by the Supreme Court. Judgments by the Board in disciplinary proceedings are reviewable by the Supreme Court upon the petition of the person against whom action is taken. A person who has been disbarred may apply to the Board for reinstatement. Denial of such an application precludes a subsequent application. The Supreme Court of Alabama has upheld the constitutionality of the statutes providing for the integrated Bar. Several lawyers have been tried and judgments ranging from public reprimand to disbarment have been rendered. In only one case has there been a judgment of acquittal—a fact indicative of the care with which charges are preferred. Any duly designated grievance committee may initiate disciplinary proceedings.

In a comparatively short time the results of the administration of the self-governing Bar have fully justified its existence. The lawyers as a whole believe in the system. Its functioning has aroused their general interest in the profession. They are beginning to feel that through an effective organization the Bar can accomplish a great deal in the public welfare and in the interest of the profession. So also there is a feeling on the part of the people of the state generally that the Bar is awakening to its duty to the public. They believe that an honest effort is being made to exclude from the Bar unworthy members and to exercise greater care to prevent the admission of those who are unfit. Likewise a notion is beginning to develop that the Bar may extend its influence and discharge its larger responsibility to the public in the field of sound legislation and in the administration of justice. There good results, I believe, are due largely to the specific legal obligations and definite professional powers conferred by the statute providing for the organization of the Bar.

Bar Integration in Washington

By O. B. Thorgrimson*

The adoption in 1933 by the Washington Legislature of the Integrated Bar act was the culmination of several years' effort by the Bar to improve its situation. The voluntary State Association only comprised a small portion of the practicing lawyers. It, of course, had no real power and its meetings were devoted to hearing scholarly addresses on various law subjects and an opportunity for social intercourse. The only power outside of the courts themselves was vested in a board of law examiners appointed by the Supreme Court. This Board had charge of investigating charges against lawyers, prosecuting and reporting on such charges and conducting examinations of applicants to the Bar. The Board, composed of active practicing lawyers, received very little compensation and, of course, could not adequately cover the whole field. Fortunately, however, due to the high caliber of the men appointed, their work was, considering everything, very good indeed.

Realizing the deficiencies in the old system, a voluntary committee of lawyers got together with the idea of securing the passage of an Integrated Bar act. This movement finally resulted in a state wide committee which finally, through vigorous efforts secured the passage of the act. Prior thereto the majority of lawyers were indifferent to the new scheme, with a few actively opposed. The chief trouble was to overcome the inertia of the indifferent. Many lawyers felt the new plan would mean a possible control of the Bar by a few active ones and no real assistance would be given to the lawyers generally, and many were against the payment of any compulsory dues. There was also, of course, opposition from the individualists and those who were fearful of disciplinary measures. Lawyers generally, however, by discussions at bar meetings,

*Of the Seattle Bar; first President of the Washington State Bar.

were awakened to the abuses of the old system, such as the inability to secure higher admission standards, failure to prosecute delinquent members and an inability to achieve some real influence to the lawyers as a class, not only in securing better men for the bench, but also in getting through legislation having to do with practice and procedure.

The act adopted sets up a short form covering the matter generally, leaving the details to rules and regulations by the Board. The control is vested in a board of six governors, who are elected by ballot by the lawyers in their respective districts. This Board selects the president, secretary, and various committees, and holds stated meetings. Due to the high caliber of the men elected to this Board, their work has been outstanding. Under the new management, the requirements of candidates for admission have been increased and a great many unfit candidates have thereby been weeded out. One of the evils of the old regime was the number of so-called law clerks who were allowed to take examinations and keep on taking them until a large percentage slipped through. Now a law clerk must have at least two years of college work before registering and we have an effective checkup of the work done by all such law office students. As a consequence, we have greatly reduced the number attempting to get in without a law school education, it being realized that as presently operated law offices cannot give an effective legal education to their clerks.

However, the greatest improvement has been in the work of suspending or disbarring those guilty of unlawful practices and improving the general tone of the Bar through the organization of effective local committees, who, with the aid of a paid investigator and prosecutor, investigate charges which if found worthy of prosecution are followed by prompt trials by trial committees composed of high class lawyers, the personnel varying in different sections of the state. Formerly the courts, for some reason or other have been rather lenient towards erring lawyers, and at first the Supreme Court, which, of course, still has the final say, was inclined to look with a critical eye upon the reports of the trial committees, backed by the recommendation of the Board of Governors, but now, realizing the Bar generally is effectively organized and is a unit back of its officers in prosecuting these cases, it has given us much better support.

A great deal of good has also been done in stopping some of the unauthorized practices of law. While, of course, the prime purpose of preventing unauthorized practice is the protection of the public, yet lawyers have felt that the Bar organization is of some help to them, and they have efficiently aided in stopping such unlawful practices.

The great thing, though, is that the lawyers now feel that under their present organization they are a part of an effective association, and this has done a great deal to improve their morale. Meetings are better attended, the lawyers are more willing to engage in committee work and feel more pride in their work than they did formerly when they had only a weak and ineffective association. We have also found that when we recommend appointments we are listened to with much more respect than formerly, and we think our influence in this regard will continue to increase.

In the three years that the act has been in operation, there has been a complete change of sentiment among the members of the Bar. The fears and doubts as to the work under the new scheme have been dissipated, and aside from the few who are against any kind of organization and those who fear the more effective discipline, lawyers generally are heartily in favor of the act and appreciate its advantages. There now appears to be a feeling of responsibility and power, much better committee work is being done, and the morale of the entire Bar has been improved, and when the Bar makes recommendations on any matter it is listened to with respect.

The Youngest State Bar—Michigan

By Roberts P. Hudson*

The State Bar of Michigan is the youngest child in the family of state bars, and if the recital of its accomplishments seems overladen with self-gratification, I hope you will attribute it to youthful exuberance. You will be interested to learn that the Michigan Bar Association was the first to approve the idea of integration after the subject had been discussed at the meeting of this Conference of Delegates held here in Boston in 1919. It was here that President Claude Carney of the Association heard the presentation of the subject matter by Secretary Herbert Harley of the American Judicature Society. That led to the creation of the Conference Committee on Bar Integration. Before that committee could make its first annual report the subject was presented at the annual meeting of the Michigan Bar Association held in Detroit in the late spring of 1920. Mr. William A. Pol-

*Of the Sault Ste. Marie Bar; first President of the Michigan State Bar.

er secured unanimous approval of the proposal at this meeting and the result was a bill in legislature in 1921.

You will be equally interested in the fact that Mr. Potter as a present Justice of the Michigan Supreme Court participated in the adoption by the court of the rule which provided for the entire organization of the bar of Michigan in accordance with the act of Legislature in 1935. This brief act is published in State Bar Acts Annotated, Third Edition, 1936, and the Supreme Court rules appear in 263 Northwestern Reporter, advance sheets No. 8, January 22, 1936, p. xii. In three or more legislative sessions our bill failed of enactment. The history leading up to final success after strenuous efforts in 1931 and 1933 show to my mind that back of bar integration, and through it, and woven into the whole structure is first, loyalty to the profession plus hard work plus cooperation plus everlasting energy. As I look over these years of struggle I feel that the press had as much to do with final success as any other single factor. The newspapers suggested to the bar that it was time to clean house, to look after our own affairs, and to supervise the conduct of our members. If any of the delegates now are disposed to discouragement, you have the experience of Michigan to comfort you. From 1920 the friends of bar integration carried on an extensive program of education and for practically sixteen years they were everlastingly preaching a gospel of a unified organization with power to discipline over its own members.

Our Supreme Court rule places the administrative powers of the bar in a Board of Commissioners, seventeen of whom are elected in congressional districts and four are appointed at large by the Supreme Court. The detailed provisions of the rule cover virtually every point and cover every power that one finds in any of the long bar statutes, and the rules may be amended by the Court whenever the need may arise.

We have committees on nearly all the topics dealt with by the American Bar Association and active work is in progress in respect to unlawful practice, judicial selection and tenure, and many other matters. The Committee on Criminal Jurisprudence is engaged in extensive research as to pardon and parole systems in all states. The Legal Aid Committee has set up an organization in every one of Michigan's eighty-three counties. The Committee on Legal Publications is making a study of the cost and delay of Supreme Court litigation. We have a committee actively cooperating with the State Medical Society in eliminating causes of friction between the two professions and promoting the mutual interests of both.

There is, naturally, not much of accomplishment to tell you since our organization meeting, held last January, when compared with the reports made by older integrated state bars. However, I can assure you that the volume of correspondence received at our office in Lansing proves that the organization was sorely needed and is now very highly appreciated and, to you delegates interested in efficient bar organization I offer the experience of Michigan which has meant hard work, loyalty to the profession, intensive application, the assistance of the press and, above all, the cooperation of the members of our profession in the State of Michigan.

Missouri Plan of Bar Administration

By Boyle G. Clark*

The merits of the Missouri plan of Bar Administration as compared with the voluntary bar associations and bar organizations incorporated by legislative enactment and other forms of bar government by judicial rule, in my estimation, should be weighed upon the basis of ability to accomplish the objectives of all bar associations rather than upon the basis of logic. It is assumed that under the decisions of the particular states of which the various forms of bar organizations exist that those organizations are legally constituted under the organic law. In a striking generality, true in this instance, I believe, the late Justice, Oliver Wendell Holmes, stated: "The life of the law has not been logic, but experience."[1] Tested by its brief experience of some twenty (20) months and by the longer experience of some of its constitutive processes the plan of bar government now existing in Missouri appeals to the Bar of Missouri as the most effective method of obtaining the ends which all bar associations and organizations are, or should be, striving.

The Missouri plan consists of a delegated judicial bar government complementary to a voluntary state association. To the voluntary state association are left the fields of fellowship, subsidy of legal research, and other functions not concerned with admission to the bar, discipline of lawyers or suppression of unauthorized practice of law and other practices subversive of administration of the law by the courts. Too long voluntary bar associations have proved themselves incapable of enforcing rules of professional conduct, incapable of dealing persistently and practically with the unauthorized practitioners of the law, and often not aware of the development of

*General chairman of the Bar Committees of Missouri.

1. Holmes, The Common Law (1881), p. 1.

institutions and practices which impair the efficiency of the courts and the relationship of attorney and client on which the administration of justice is primarily based. Lay intermediaries, best exemplified by the commercial collection agencies and lay independent insurance adjusters, having encroached far into the field of the practice of law not only unopposed by the voluntary associations but actually abetted by a large part of their membership eager to profit by the lay control of various branches of the practice. Among these parasitical intermediaries the law list "racket' grew to astounding proportions.

To meet the public demand for discipline, and to meet the public and professional demand for the suppression of the unauthorized practitioners and these parasitical intermediaries, various forms of official bar organizations sprang up in those states where the sentiment was powerful enough to cause their adoption. For a while organization of the bar took the form of the so-called incorporated bar created by legislative enactment. Dissatisfied in the expedition with which conditions were corrected, the Bar of Missouri through the vountary Bar Association petitioned the State Supreme Court to appoint a commission to survey existing conditions and to recommend some means for suppression of unauthorized practice and discipline within the profession. The report of the commission recommended the existing plan of bar government now in force in Missouri. Asserting its constitutional power to protect itself, the proper administration of justice and the right of litigants; to prescribe the qualifications for practice of law by its officers, the Supreme Court of Missouri prescribed as rules of profesional conduct, the Canons of Ethics of the American Bar Association, created local and supervisory bar committees charged with the duty of investigating complaints and commencing disciplinary proceedings; declared that under the constitution of Missouri, the Courts rather than the legislature were charged with the function of passing upon the qualifications for admission to the bar; charged its bar committees with the protection of the profession and the courts from the practices of laymen subversive to the administration of justice and the franchise of the members of the bar; created a judicial council for the purpose of studying and recommending procedural reforms; financed its program by levying a small yearly license fee against all members of the bar.

Succinctly stated, the aims of our bar government, as well as of all others, is the attainment of that state in the profession when only lawyers will handle law practice; when a lawyer may sit in his office secure in the fact that law practice comes to him upon merit alone; when the law practice seeks the lawyer and is handled by the lawyer uninfluenced by the unauthorized practitioner, uninfluenced by intermediaries and uninfluenced by unprofessional conduct.

The judicially regulated bar such as is found in Missouri today appears to us to be capable of obtaining these ends. As stated, our short experience has proven this fact to us. We are no so much advocates of the means as advocates o the ends. If a more efficient device to deal with our problems should be proposed, we would advocate its adoption.

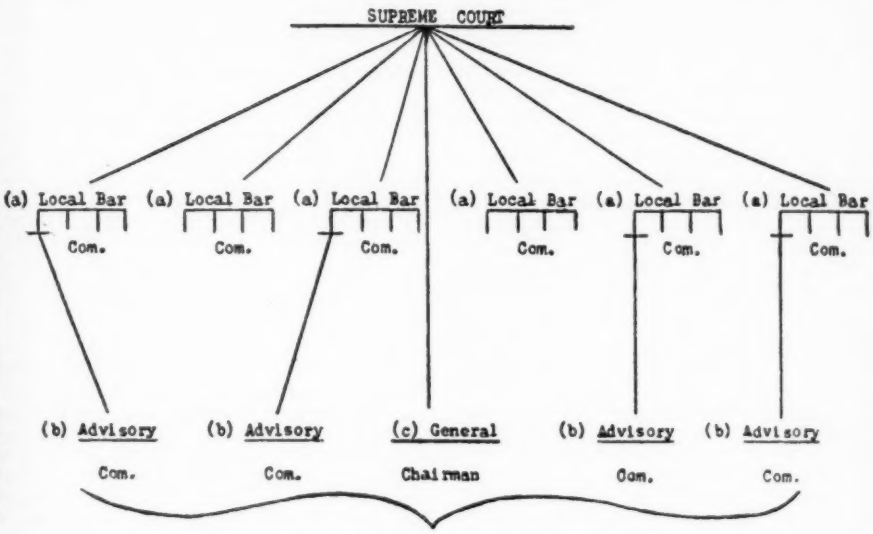
The salient features of our system are these: Appointed rather than elected officials are more free to deal with organized minorities, or majorities for that matter, and their acts will no be tempered with fear of displacement or by ill-advised pre-election pledges or alliances. The recent agitation for appointment of the judiciary now prevalent in every state, and the proven success of the federal judiciary, is indicative of the feeling that appointed officials of the administration of judicial functions are not only desirable but necessary. In this one feature alone our bar administration has secured that elusive quality, independence of thought and action. (a)

An outstanding virtue of the judicially regulated bar is the facility with which needed changes in structure and procedure may be affected. We are constantly amending the rules of professional conduct and changing the powers of bar administration as the circumstances require. All those affected by the administration of our rules, whether laymen or lawyers, have instant recourse in petition to the highest court of this state for the review of inequities of the system. Our system furnishes to the lawyer and the layman, the resident and the non-resident, the summary review of the entire system or a part thereof that our court continuously affords in its supervisory function. (a)

The ever present power to investigate with the use of compulsory process any institution, conduct or practice which is thought to impair the administration of justice or to impair the lawyer's franchise, is invaluable. We have the use of the process of the Supreme Court of Missouri to reach any person subject thereto in order to find the facts concerning, and to uncover the method of handling any matters affecting the administration of the courts. And I may say that extra-territorial failure of our process may be well taken care of by the power to regulate the handling of the law practice in this state, the matter of our primary concern. Notwithstanding this inquisitorial power our entire bar administration in discipline and in suppression of unauthorized practice and in suppression of insidious practices must in every instance afford a hearing in a recognized form of action. To the bar administration our court has given the power to act, the power to inquire but has retained the power to supervise, to amend, to hear, determine and adjudge. We know of no more that could be asked of the court by the public or the bar. (b) (c)

We regard our system of bar administration as a compact between the Supreme Court, its bar and people of our state, on the one hand to return to the lawyers' franchise its pristine value on the other hand to insure to the public the integrity and sufficiency of the bar.

PLAN OF MISSOURI BAR REGULATION



(a) Local bar committee of four, appointed by Supreme Court in each of 38th Judicial Circuits.
Invested with powers of commissioners of the Court to inquire into the conduct of lawyers and to institute disciplinary actions against them in the lower courts or Supreme Court, and authorized by the Court: (1) To subpoena witnesses, (2) take testimony; (3) file information against offenders; (4) to investigate the unlawful practice of law; and (5) to institute and prosecute actions to suppress unlawful practice of law.

(b) Advisory committee of five, appointed by Supreme Court; four being chosen from local bar committees.
Invested with power, under direction of the General Chairman, to investigate the conduct of lawyers throughout the State (1) where accused was member of a local Bar Committee who would hesitate to proceed against one of their own number, (2) where the accused petitioned to be heard before Advisory Committee; and (3) in cases where, in judgment of General Chairman, jurisdiction should be assumed by Advisory Committee, of a complaint against any lawyer.

(c) General Chairman of bar committees (ex officio chairman of Advisory Committee) appointed by Supreme Court.

Work of committees is financed, under rule of Supreme Court, by small annual fee of $3 paid by each practicing lawyer in the State. Fees are payable to clerks of Circuit Courts, who remit to the Clerks of the Supreme Court. Disbursements all made on warrants signed by General Chairman of Bar Committees.

Past, Present and Future of the Legal Profession

By Arthur T. Vanderbilt*

The future of the bar is not an isolated problem. We live in an era of economic, social and political change of world-wide extent comparable only with the great movement of the latter part of the eighteenth century we call the Industrial Revolution in England, the American Revolution in this country and the French Revolution on the Continent. An inevitable transformation in our mode of living and our habits of thought is taking place as a result of the impact of our tremendous advances in the realm of the physical sciences on our relative inertia in the field of the social sciences. This presents a sharp challenge to every existing social institution, the bar included. It is inescapable under such circumstances that every institution, willingly or more often unwillingly, should be submitted to examination and re-examination, to appraisal and reappraisal. Each institution must justify its existence. It must adapt itself to the new social environment in which it finds itself, while at the same time seeking to influence the nature and the scope of its new environment.

What, under these conditions, may we say of the bar? What of its organized activities in this period of stress and storm?

You have already heard leaders of the bar from the Coast, the Mid-West and the South give us testimony, at first-hand, of the results accomplished in their states through the integration of the bar. Their testimony has been convincing and, to my mind, conclusive. You would be justified in wondering what one coming from the East where there is no integrated bar can add to the discussion. Perhaps your Chairman in inviting me to address you thought that a horrible example might, by way of contrast, add zest to the proceedings. I can appreciate the possibilities of that approach to the problem, but I think I may serve you better otherwise.

During the past few months the National Conference of Judicial Councils, of which I happen to be chairman, has been gathering information from the several state bar associations on two vital matters: (1) what they have done to better the administration of justice, (2) what they have done to improve government in state, county or municipality. These are fundamental matters. They are far removed from what William James, speaking of medicine, refers to as the trades-union aspect of the profession. We have asked for reports on their actual accomplishments in these matters as distinguished from their aspirations, their speeches, and their resolutions.

*Chairman, National Conference of Judicial Councils; Member, Board of Governors, American Bar Association.

Integration Is a Vital Issue

This will not permit me to call the roll of the forty-eight states. I must content myself with summarizing the evidence submitted to us. (1) In those states in which the bar is organized, in which it functions as a unit, there has been far greater progress in the important work of adapting our judicial machinery to the changing economic and social conditions of the twentieth century than in those jurisdictions where the state bar association is a voluntary group embracing generally a mere minority of the bar; (2) our state bar associations, singularly enough, have not seemed to sense their responsibility for government. I say singularly enough, because it seems obvious that if the law is a public calling, as Senator Root, the patron saint of this Conference, so ably demonstrated years ago, we lawyers are as responsible for adapting our legislative methods, our executive and our administrative methods as we are our judicial methods to the needs of the times. This lack of responsibility on the part of the bar is the more remarkable in view of the rapid growth over the past twenty-five years of administrative agencies in both the federal and state governments exercising widespread and varied judicial functions. I venture the prophecy that the organized bar will in the future, if it is to uphold its pretensions as a public calling, interest itself profoundly in the problems of government state and federal, legislative and administrative alike, on a scientific and non-partisan basis. Be that as it may, in its peculiar and traditional field of improving the administration of justice the evidence shows that the bar has been most successful in those states where it is organized and where it acts as a unit.

Argument after argument may be adduced in favor of the organized bar. Counter-arguments (all of them based, in the final analysis, on the false assumption that a license to practice law is a property right not involving any corresponding duties to the courts, the government and society) have been advanced against it. But all of the counter-arguments fall to the ground and all of the favorable arguments swing into line as mere supporting corollaries behind this fundamental and conclusive proposition: The organized bar has pragmatic virtue. In short, it works. It succeeds where the voluntary state bar association has either failed utterly or at best has functioned only partially and spasmodically. When the bar is unified, it has a standing with the bench, the chief executive, the legislature and the public generally that it has nowhere else attained.

This unification of the bar has come about in two different ways. One process of integra-

tion through legislative enactment or rule of court or both, as it exists in eighteen states, has already been traced by the preceding speakers. The other process is tradition, the tradition of a learned professional class which gave us a united bar in the original thirteen states in the period following the Revolution with at least two surprising survivals persisting into the twentieth century. Because I am convinced that it will shed light on the problems of effectively organizing the bar today, I shall trace briefly, first the causes which account for a bar united by tradition in the original thirteen states and, secondly, the forces which operated to destroy that tradition.

Persistence of English Tradition

In the first place, many of the leaders of the pre-Revolutionary bar belonged to the Inns of Court; they brought back with them the traditions of the English barrister. An even stronger tie uniting the lawyers of the Revolutionary period was the fact that most of them had served in the War for Independence either as comrades in arms or as members of the Continental Congress or of the state legislatures. To them in large measure must go the credit for formulating the new state constitutions and, later, the Federal Constitution, as well as for bringing about their adoption.

That the unifying force of the traditions of the Inns of Court was continued in a form adapted to the needs of the new country is quickly demonstrated by noting the requirements for admission to the bar. In New Jersey, for example, according to early rules of the Supreme Court the applicant must serve a clerkship with an attorney for at least five years (four years, if a college graduate) and be of good moral character. Then he must take an examination before one or more of the justices of the Supreme Court and "thereupon give satisfactory evidence of his learning in the law and his knowledge of the practice thereof as established in this state." The examination was given by three of the twelve sergeants at law of the Court (their appointment as sergeants being proof of their standing as the leaders of the bar), with only the attorneys of the court entitled to be present. After three years of practice as an attorney, he might take another examination before the same justices, similarly conducted by three sergeants at law, this time in the presence of the counsellors at law only of the Court. If he gave "satisfactory evidence of his knowledge of the principles and doctrine of the law and of his ability as a pleader," he might then for the first time appear before the Court *in banc* or the Chancellor. Is it not obvious that under such a system of admissions the bar was in reality an organized unit, its traditions handed down by preceptor to student from generation to generation and its initiates chosen carefully after intimate personal acquaintance by the judges and leaders of the bar? And, in passing, may we not pause to question whether or not our present standards of admission are as high or our methods of admission as effective as they were a century and a half ago? Is there not much for us to learn from the participation of the bench and the leaders of the bar in the vital matter of initiating new members into their learned profession? Is not, for example, the preceptorial system recently promulgated in Pennsylvania merely a partial return to the ancient personal relationship of a century and a half ago?

The unity of the bar brought about by the methods of admission was not deviated from throughout the lawyer's active life. He rode the circuit with his fellows; he listened to them try their cases and studied their methods; he ate, drank and lived with them and the judges, too, at the same tavern. He attended at opinion day in the Supreme Court each term and listened to the justices as they unfolded the law, reading their opinions to the assembled bar; and you may be sure he, in turn, at the tavern took his part in the inevitable discussion of the opinions. The criticism by members of the bar of judicial opinions was then a very vital matter, not relegated as now to the peaceful atmosphere of the law reviews, but spontaneous, immediate and not altogether free from personal bias. It is difficult for us to estimate how much of the strength of the legal opinions in the formative period of our law was generated by a consciousness on the part of the judges of this type of criticism. The lawyers, too, in many communities had their law clubs, with weekly meetings for the reading and discussion of legal papers and genial social intercourse as well. The importance of these clubs on the development of judicial institutions and the bar as a profession cannot be over-emphasized. You will find interesting glimpses of the law clubs in Warren's History of the American Bar. All in all, the relation of lawyer to lawyer, despite strenuous professional rivalries and the relation of bench to bar in the post-Revolutionary period of our history was personal and intimate, in many ways comparable to the fellowship of college and fraternity.

So homogeneous was the bar by education and training that occasionally the most remarkable accidents occurred. Thus, in 1804, due to the unexpected political accident of the Republicans defeating the Federalists in the party struggle for the control of the legislature, it was found that there was no acceptable lawyer in New Jersey who had had the foresight to become a Republican and thus render himself eligible for election to the bench. Consequently, William Rossell, who up to that time had enjoyed a contented life as a saddler, found himself elevated to the distinguished position of justice of the Supreme Court. Judge Elmer, in his "Reminiscences of New Jersey," describes the result most vividly:

"His total lack of legal knowledge, especially in matters of practice and pleading, was so much complained of by the lawyers of the circuit which he

attended, that in 1820 an act was passed, requiring the justices of the supreme court so to arrange the several circuits in the State, there being no judicial districts established by law, as now, that no justice should hold the circuit court in the same county two terms in succession, unless in the opinion of the court there should be a necessity therefor."

New Jersey survived the experiment, which, fortunately for all concerned, has never been repeated; the bar thereafter took care to see to it that there was always a goodly representation of lawyers in each of the political parties available for such judicial appointments as might arise.

The organization of the bar through tradition, combined with professional training and keen interest in public affairs, led De Tocqueville, writing in 1835, to characterize the judges and the lawyers as the American Aristocracy. His observations are worth quoting:

"The special information which lawyers derive from their studies ensures them a separate station in society; and they constitute a sort of privileged body in the scale of intelligence. . . . Lawyers are attached to public order beyond every other consideration and the best security of public order is authority. . . . In America there are no nobles or literary men, and the people are apt to mistrust the wealthy; lawyers consequently form the highest political class and the most cultivated circle of society. . . . If I were asked where I place the American Aristocracy, I should reply without hesitation, that it is not composed of the rich, who are united by no common tie, but that it occupies the judicial bench and the bar."

No wonder, then, that in certain of the original states where the number of the bar has remained small, and where the interests of the community are homogeneous, such as Delaware and New Hampshire, for example, we find that despite the disintegrating forces I shall soon refer to the bar is still a unit in tradition, accomplishing quite as much for the administration of justice as the more modern integrated bar.

Disintegration of Bar

But although the bar engendered by tradition has survived here and there, in most of the states it disappeared in the first half of the nineteenth century. Its disappearance is clearly our loss. The causes of its disintegration were numerous and many of them have their significant lesson for us today. I will enumerate them rapidly: (1) The ancient distinction between attorneys and counsellors passed away in most states; all men are created equal, why not all lawyers? (2) *A fortiori* the sergeants at law—in England only sergeants might become judges; for centuries they were addressed by the judges as brethren—had to be eliminated by way of sacrifice to the new equalitarian dogma. (3) Lawyers in the hard times of the post-Revolutionary period and again in the turmoil of the Jacksonian period, generally represented the creditor class and therefore were extremely unpopular. (4) The judiciary, no longer appointed in many states but chosen by popular vote, came to hold themselves aloof from an unpopular bar. Why should a judge, dependent on a popularity contest for re-election, fraternize with an unpopular element among the voters? (5) The lawyer's participation in the administration of justice began to be minimized. Once a judicial decision was deemed a joint labor of judges and lawyers and the arguments of counsel were liberally abstracted in the reports. The failure to continue to summarize the arguments of counsel in the printed reports was not alone in the interest of economy in printing. It typified the submergence of the lawyer in the judicial process and the exaggeration of the importance of the judge—to the great loss of each class. (6) Opinion day became a thing of the past. Opinions were now written and filed without being read before the bar. The criticism of the bar was postponed from the dramatic moment of the delivery of the opinion to the remote date of its publication in a bound volume of reports. The effect on judicial opinions is known to every lawyer who has had occasion to contrast in the course of an argument a quotation from an opinion of Marshall or Story or of Chancellor Kent or Chief Justice Shaw, each with its masterly marshalling of facts and argument, its skillfully chosen phraseology and its rhythmical swing to its inevitable conclusion, with a quotation from one of our modern machine-made opinions, dictated to a stenographer without any thought or necessity for oral delivery in court. The resulting loss to our jurisprudence is irreparable. (7) The judges of the upper courts stopped riding circuit. Save for ceremonial occasions and political campaigns for re-election they took the veil. They became removed from the actual problems of the trial judge or the practicing lawyer. In contrast, the justices of the English High Court, including the Lord Chief Justice, still have *nisi prius* duties, still have intimate contacts with the judges of the lower courts and the barristers such as are quite unknown in this country. Perhaps this account for the power of the Lord Chief Justice to force the appointment of the Lord Chancellor's committee to report on the delegation of legislative powers to and the exercise of quasi-judicial powers by the ministers and administrative officials. No parallel for such influence exists in this country. (8) Closely related to the ill repute with the public of the lawyer class was the new political philosophy that the Judge should not hold office during good behavior, that he should be elected as all other public officers were, that there should be rotation in judicial offices as in all others, that on the bench as elsewhere, in the public service "to the victor belongs the spoils" and that, incredible as it may seem, too great a knowledge of the law might be a judicial handicap. Saddler Rossell on the bench was then unique.

But two of the greatest disintegrating forces adversely affecting the traditional unity of the bar were the familiar legal devices, the partnership and the corporation. (9) The effect

bar? And, in passing, may we not pause to ques- plained of by the lawyers of the circuit which he

permitting lawyers to form partnerships is easily shown by comparing the English barrister, who always practices alone, with a partnership at law. The English barrister is personally responsible for the condition of the bar; the American partner at law, applying the doctrine of division of labor and specialization of effort, all too often has evaded this responsibility by assuming to delegate it to his partner, who in turn assumes to delegate it to another partner and so on *ad infinitum*. Individual responsibility has been lost. There are other important distinctions. The English barrister, by and large, acquires his retainers on the basis of his individual merit; in a law partnership, an attorney is not dependent solely on his individual efforts, but all too often basks in the reflected glory of a great name. In England a barrister has nothing he can sell or bequeath; in the law partnership, particularly where the firm name remains unchanged, there is a tendency for legal business to continue regardless of changes within the partnership. To the extent that this is so, the individual lawyer's first loyalty is likely to be to the partnership rather than to the bar as an institution. In many instances the English barrister is attracted to politics as a legitimate means of proving his ability and thus of obtaining professional or judicial preferment—to the great advantage, generally, of the public. In a law partnership, on the other hand, the larger the partnership the less the attorney's opportunity is likely to be for political activity. Indeed, in some law firms, representing certain types of big business requiring contacts with government agencies, political activity is necessarily regarded as taboo; in such cases the members of the firm are reduced to the status of political eunuchs. Though its use may be justified as the only method of meeting the demands of modern business on the practicing lawyer and though it would obviously be impossible to change our system, it is difficult to see any good that has come to the bar as an institution or our politics generally from the application of the partnership device to lawyers themselves.

(10) The corporation has been an even more pernicious device in breaking down the unity of the bar. In the first place, we must note the gradual absorption of law business by corporations during the past fifty years. With no organized bar to resist the movement, what was more natural—or more shortsighted, if we look at it from the standpoint of the bar as an institution—than for an enterprising lawyer to incorporate various phases of his business; hence the collection agencies, adjustment bureaus, automobile associations, hospital councils, title companies, trust companies and incorporation companies. These institutions are what is causing our committees on the unauthorized practice of the law so much trouble these days and what, too, is causing so much misunderstanding on the part of the public as to the aims of the bar. Had we had an organized bar fifty years ago, most of these mistakes and difficulties would have been avoided. We are paying the penalty of our predecessors' neglect. There is another way, as I have already indicated, in which corporations have adversely affected the bar as an institution. A corporation, let us say, requires governmental favors in the normal conduct of its business from the legislative, executive or administrative departments. Naturally its counsel is involved in these proceedings. Obviously he must be in a position to deal with the government, whichever party may be in power. Prudence or necessity dictates a non-partisan position to such a lawyer and thus many of our ablest —I had almost said best—lawyers are forced to the sidelines where public affairs are concerned.

It remains to enumerate two other points in what Henry Adams would doubtless term the degradation of the American Bar. I refer to (11) the enormous increase in the number of lawyers, far exceeding any reasonable demands of society, making quite impossible any personal acquaintance among the members of the bar and (12) the lowering of standards of admission to the bar. I have already referred to the exacting requirements for admission to practice in New Jersey existing in the latter part of the eighteenth century. The statute of 1882, known as the Five Counsellors' Act, fortunately long since repealed, is a striking contrast, illustrating the decline in preliminary requirements; any citizen over twenty-one years of age might be admitted to the bar examinations without regard to general education, law school training or office experience merely upon producing a certificate of five counsellors at law of five years' standing that the applicant was a person of good moral character and of unusual aptitude in his knowledge of legal principles. Other states sunk to even greater depths; in one jurisdiction it was provided that a senior in law school who happened to be a member of the General Assembly might be admitted to practice without examination.

To the American Bar Association belongs the credit for the splendid work that has been done in building up anew more adequate standards of admission to the bar, and to this Conference must go the credit for initiating the movement.

Bench and Bar Must Cooperate

We have traced the causes which produced the Golden Age of the American bar when lawyers, bound together by tradition and training, by common ties of patriotism and public service, labored to improve the administration of justice and to adapt their government to the new ideals of society then current. We have sketched the disintegrating forces of the nineteenth century. What are the lessons? Manifestly there can be no turning back to the old system any more than we could now have a city governed by town-meeting methods. But we can substitute for a hit-or-miss method of bar associations a representative system of bar organization, which will give us a self-governing institution directed by the men most capable in the judgment of their

fellows of governing their profession. This is the method of the integrated bar, and, as I said at the outset, where it has been tried, it has been successful. In the seventeen states where it is in force, the bar has the respect of the courts, the legislature, the chief executive and the public. The path of progress is clearly indicated so far as state organizations are concerned.

But we cannot afford to stop merely with setting up an incorporated bar. We must make every lawyer realize his individual responsibility to his profession, to the bar as an institution. In no other way can the dignity of our calling be safeguarded. We must start with the judges. The English judges continue to be active in the Inns of Court. Our judges should and can be leaders in the work of improving the administration of justice; nobody is more cognizant of existing defects than they are; their experience fits them to counsel us as to proposed innovations. Realizing fully the extent of their duties, we must still insist, moreover, on their resuming an active and efficient part in the matter of the admission of lawyers to the bar.

The leaders of the bar likewise must resume their participation in this important work; like the judges, they cannot be permitted any longer to delegate it. They must do more; as members of judicial councils or officers of state bar associations, they must take their stand and lend the weight of their influence not merely to judicial reform but also to the improvement of government. Every lawyer, moreover, must be given his opportunity to be of assistance, and since manifestly all cannot be recognized in the state associations, local clubs, such as existed before and after the Revolution—such as have for years existed, for example, in the City of Baltimore—become the natural forum for informal discussion and the threshing out of ideas before they are presented to the state bar associations for action. In these clubs the foremost practitioners and the judges, again, have the responsibility for leadership.

The junior bar sections in many states furnish the younger men a most acceptable avenue for useful activity. Student bar associations exist in several law schools; a subcommittee of our Board of Governors which has been studying this movement has recommended that further inquiry on the matter be referred to the new Section on Bar Association activities which is now succeeding to the work of this Conference. These are all ways and means of bringing every lawyer to a realization of his individual responsibilities to his profession, of his duty to aid in improving jus and in bettering government, and of provid him with a meeting place for the thorough frank discussion of these fundamental matters.

Three Tests of Bar Efficiency

I fully realize that most judges and ma lawyers may think I am unnecessarily insiste upon their individual responsibility for law order. Before they reach a decision in favor their own ease and complacency, I ask them get the answers to three questions that can supplied statistically by any well-informed me ber of a judicial counsel:— (1) In the trial civil cases in your state, is the litigant affor a prompt and efficient trial at reasonable c before experienced and competent judges and partial and intelligent juries?; (2) in the field criminal law are your state law-enforcing agenc adequately organized, and is the percentage arrests to complaints, the percentage of tri to arrests, the percentage of convictions to tri the percentage of affirmances to convictions s as to lead you to believe that the criminal is actually being enforced in your state?; (3) in the broad field of administrative l where today the adjudications on the rights citizens are undoubtedly much more numer and extensive than in the ordinary courts, you satisfied with the methods by which the cisions are reached by administrative agenc with decisions rendered, generally by laym without reasons given or opinions filed in ma cases, or with the methods—or often lack methods—of review by the courts of these ministrative decisions? If you are satisfied w the answers to these fundamental questions, organization is quite superfluous save for soc purposes. But if your answers leave you doubt, or dissatisfied, or apprehensive, or jected, I venture the suggestion that the in grated state bar aided by local bar associatio local bar clubs, junior bar sections and stud bar organizations, generating an intelligent enlightened professional opinion of both jud and practitioners through a representative c porate state organization equipped to exert influence for the benefit of the public and gants, furnishes the best available weapon resolving your doubts, maintaining the dign of the profession as a public calling and y own personal self-respect, as well as bringing nearer to a solution of the vital problems confronting us in the several states with resp to the administration of justice.